No. 89-601

Supreme Court, U.S.
FILED
MAR 6 1990
JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1989

COMMISSIONER OF THE IMMIGRATION AND NATURALIZATION SERVICE, ET AL., PETITIONERS

v.

MARIE LUCIE JEAN, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED OCTOBER 13, 1989
CERTIORARI GRANTED JANUARY 22, 1990

TABLE OF CONTENTS*

	Page
District Court Docket Entries	1
Court of Appeals Docket Entries	85
Memorandum from David Crosland, Acting Commissioner, to Kenneth W. Starr, Counselor to the Attorney General, re: Haitian Policy (Plaintiffs' trial exhibit 94), dated March 20, 1981) ...	89
Legal Memorandum to Paul Schmidt, Acting INS General Counsel, re: Bond, Asylum, and Exclusion Processes (Plaintiffs' trial exhibit 94A)	
Affidavit of Robert E. Joyceam, sworn to November 5, 1982	104
District Court Memorandum Opinion And Order On Attorneys' Fees, Costs And Expenses, done and ordered August 29, 1986, with Appendix: ..	112
District Court Order Concerning Plaintiffs' Entitlement To Attorneys' Fees, Costs And Expenses Pursuant To The Equal Access To Justice, done and ordered December 6, 1985 ..	152
Submission Of Attorney's Fees Affidavits Pursuant To Court Order Of August 29, 1986, served served September 8, 1986:	165
Affidavit Of Ira J. Kurzban, Esq. On Attorney's Fees Pursuant To Court Order Of August 29, 1986, sworn to September 8, 1986	166

* The district court's corrected memorandum opinion and order on attorney's fees, costs and expenses (filed October 1, 1986) was printed in the appendix to the petition for a writ of certiorari and are not included herein. Likewise, the court of appeals' opinion (filed December 27, 1988), judgment (filed February 2, 1989) and the order denying petition(s) for rehearing and suggestion(s) for rehearing en banc (filed May 17, 1989) are printed in that appendix and not reproduced herein.

Contents—Continued: Page

Affidavit Of Bruce J. Winick, Esq. On Attorney's Fees Pursuant To Court Order Of August 29, 1986, sworn to September 2, 1986 169

Affidavit Of Irwin P. Stotzky, sworn to September 1, 1986 171

Supplemental Affidavit Of Vera A. Weisz with Reference To Attorneys' Fees And Costs, September 2, 1986 172

Affidavit of Sandra M. Lipsman, sworn to September 8, 1986 174

District Court Order Vacating Memorandum Opinion And Order On Attorneys' Fees, Costs and Expenses, done and ordered September 10, 1986 176

Order granting certiorari 177

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Civil Action No. 81-1260-Civ-Spellman

LUCIEN LOUIS, ET AL., PLAINTIFFS

v.

ALAN C. NELSON, ET AL., DEFENDANTS

DOCKET ENTRIES

DATE	NR	PROCEEDINGS
1981		
JUN 10	1	HABEAS Corpus Petition, Copy mailed to Atty. Gen. w/o affidavit f/p fw
10	2	EMERGENCY motion for a stay of exclusion and deportation and for a hearing thereon, by petitioners. fw
10	3	MEMORANDUM in support of em. mot for stay of exclusion and deportation and for hearing, by petitioners.
11	4	NOTICE to produce documents at hrg., by petitioners. fw
11	5	NTOICE to produce witnesses at hrg., by petitioners. fw
16	6	AMENDED PETITION for Writ of Habeas Corpus and Complaint for declaratory, injunctive and mandatory relief—class action by pltfs. fw

DATE	NR	PROCEEDINGS
16	7	NOTICE to produce witnesses @ trial, by pltf. fw
16	8	NOTICE of taking depositions of Doris Meissner 8/13/81 @ 9:00 AM; David Crosland 8/14/81 @ 9:00 AM; Hon. Joseph W. Monsanto on 8/10/81 @ 9:00 AM; Hon William Nail 8/10/81 @ 1:00 PM; Joe Howerton 8/11/81 @ 9:00 AM and Fred Alexander 8/11/81 @ 1:00 PM, by pltf. fw
16	9	NOTICE to produce upon defts, by pltf. fw
16	10	INTERROGS and request for admission upon defts, by pltf. fw
16	11	NOTICE to produce add. witness at trial, by pltf. fw
17	12	SUMMONS issued to Doris Meissner Fred Alexander Immigration & Natz. Lee Rowland William French Smith—U.S. Atty General Joe D. Howerton U.S. Atty. fw
18	13	TRIAL MEMO, by respondents. fw
18	14	*RETURN* to amended petition for Habeas Corpus and motion to have parties dropped and claims severed in complt for declaration inj. & Mandaotry [sic] relief by fed defts. fw
23	15	RETURN of service exec. 6/22/81 as to Fred Alexander thru Ann Frank. fw

DATE	NR	PROCEEDINGS
23	16	RETURN of service exec. 6/22/81 as to Lee Rowland thru Anne Frank. fw
23	17	RETURN of service exec. 6/22/81 as to Joe D. Howerton thru Anne Frank. fw
23	18	RETURN of service exec. 6/22/81 as to Immigration & Natz thru Anne Frank. fw
26	19	MOTION for leave to file amended petition for writ of habeas corpus and complaint for declaratory, inj. & mandatory relief—class action by petitioners & pltfs. fw
26	20	MOTION to maintain the amended petion for habeas corpus as class action by plfts & petitioners. fw
26	21	MEMO in support of mot to maintain amended petition for habeas corpus as class action, by petitioners. fw
26	22	MEMO in support of mot for leave to file amended petition and on various procedural issues, by petitioners & pltfs. fw
29	23	MOTION to maintain the amended petition for habeas corpus as class action, by pltf. fw
30	24	TRANSCRIPT of Emergency Hrg. before Judge Hastings on 6/12/81 @ 9:30 AM pgs. 1 thru 67.
JULY 7	25	MEMO in response to pltfs' mot to certify class, by defts. fw
7	26	FINDINGS of fact: (ALH) Respondents' motion to have ptys dropped and

DATE	NR	PROCEEDINGS
		claims severed Denied. Respondents have 60 days to prepare and respond to new claims raised in amended petition. (EOD 7/8/81-CCAP) fw
9	27	ORDER (ALH) motion of respondents granted subpoenas served on William Nail and Joseph Monsanto hereby Quashed. (EOD 7/10/81-CCAP) fw
JULY 10	28	MOTION to vacate petitioners' final orders of exclusion and to remand to immigration & naturalization service, by respondents. NR #38 fw
10	29	MEMO in support of respondents' motion to vacate and remand, by respondents. fw
17	30	MOTION for TRO, by pltf. fw
20	31	RETURN of summons exec. thru certified mail #0207873 as to Doris Meissner, of I&N 6/18/81. fw
20	32	RETURN of summons exec. thru certified #0207872 as to U.S. Atty & Atty General 6/22/81. fw
27	33	RESPONSE to pltfs' motion for TRO, by deft. fw
AUG. 6	34	MOTION to file memo in support of TRO in excess of 20 pgs., by pltf. fw
6	35	MOTION for TRO, by pltf. fw
6	36	MEMO in support of Motion for TRO and in response to deft's reply, by plft. fw
6	37	CONSENT MOTION and memo for ext. of time within which to respond to discovery requests, by fed defts. fw

DATE	NR	PROCEEDINGS
10	38	ORDER (ALH) defts' mot to vacate pltfs' final orders of exclusion and Remand to Immigration and Naturalization service for any lawful proceeding hereby Granted. (EOD 8/11/81-CCAP-N) fw
11	–	TRANSMITTAL letter sent to I&N Service fw
12	39	MOTION for preliminary injunction, by pltfs. fw
12	40	RESPONSE to defts' notice of filing and memo of law in support of pltfs' motion for preliminary injunction, by pltfs. fw
JULY 20	41	RESPONSE to respondents' motion to vacate petitioners' final orders of exclusion and to remand to Immigration & Naturalization Service, by petitioners. fw
AUG. 18	42	MOTION for enlargement of time and for continuance of hrg on prel inj., by defts. fw
18	43	NOTICE of hrg. on prel. inj. 8/20/81 @ 9:00 AM, by MC Clerk. fw
20	44	NOTICE of filing additional affidavits, by petitioners. fw
20	45	CERTIFICATE of filing add. interrogs and request for admissions, by petitioners. fw
24	46	NOTICE of filing affidavits, by defts. fw
24	47	EMERGENCY motion to compel and for continuance of hrg. on class cert. by pltf's. fw

DATE	NR	PROCEEDINGS
24	48	MEMO in response to motion for prel inj. and for class certification, by defts. fw
24	49	RESPONSE to em. mot to compel and for cont. of hrg. of class cert. by defts. fw
24	50	SUPPLEMENTAL pldg and 2nd AMENDED COMPLT for declaratory, inj. & Mandatory relief—class action, by petitioners. fw
24	51	MOTION for leave to file supplemental pldg and 2nd am. complt., by plfts. fw
24	52	MEMO of law in support of mot for leave to file supplemental pldg and 2nd amended complt, by petitioners. fw
24	53	MEMO in support of mot for class action cert., by pltfs. fw
24	54	ORDER (ALH) defts shall produce documents requested no later than 8/26/81. Defts shall answer all interrogs and req. for adm. no later than 8/26/81. Rescheduled hrg on class cert. for 9/21/81 @ 9:30 AM, (EOD 8/26/81-CCAP) fw
25	55	NOTICE of tkg depos. on 8/31/81 of Steven D. Forester @ 4:00 PM. Gerard Jean-Juste @ 3:00 PM; on 8/27/81 beginning @ 9:00 AM of Jean Louis Servebian, Pierre Silien, Serge Verdieu, Milfort Vilgard, Joseph Calixte, Lemol LeBlanc and Wadestrad Lombard and again on

DATE	NR	PROCEEDINGS
		8/31/81 @ 1:00 PM of Laurel D. and Albert J. Krieger @ 2:00 PM. of Vera A. Weisz, by defts. fw
26	56	MOTION for reconsideration and for an expedited hrg. and for prot order, by respondents. fw
26	57	MEMO in support of mot for reconsideration, by respondents. fw
28	58	MEMO in opp to defts' motion for reconsideration and protective order, by pltf's. fw
28	59	MEMO of law on standing of the Haitian Refugee Center, Inc., by pltfs. fw
28	60	MOTION for protective order, by Steven D. Forester. fw
28	61	MOTION for protective order, by Vera Weisz. fw
28	62	MOTION for protective order, by Jean Louis Servebian, Pierre Silien, Serge Verdieu, Milfort Vilgard, Joseph Calixte, Lemol Leblanc, and Wadestrad Lombard. (Pltf) fw
31	63	MOTION for civil contempt, by pltf. fw
31	64	MOTION and memo for clarification and notice of filing, by defts. fw
*JUN. 17	65	TRANSCRIPT of hrg. before Judge Hastings on 6/17/81 @ 10:00 AM pgs 1 thru 105. fw
SEPT. 1	66	TRANSCRIPT of hrg. before Judge Hastings on 6/22/81 @ 10:00 AM Vol. 2 pgs 1 thru 291. fw

DATE	NR	PROCEEDINGS
1	67	TRANSCRIPT of hrg. before Judge Hastings on 6/23/81 @ 10:00 AM Vol. 3 pgs 1 thru 226. fw
1	68	TRANSCRIPT of hrg. before Judge Hastings on 6/24/81 @ 10:00 AM Vol. 4 pgs. 1 thru 141. fw
1	69	TRANSCRIPT of hrg. before Judge Hastings on 6/29/81 @ 9:30 AM Vol. 5 pgs. 1 thru 101. fw
2	70	SUPPLEMENTAL memo in support of mot for prel inj and in response to defts' 1st amendment argument, by pltf. fw
2	71	NOTICE of filing additional affidavits, by pltf. fw
2	72	NOTICE to produce at trial, by pltfs. fw
2	73	NOTICE of filing supplemental affidavits in support of mot for prel inj., by pltfs. fw
3	74	DEPOSITION of Kathy Price taken 9/1/81 @ 12:05 AM. w/attachment. fw
3	75	DEPOSITION of Cecilio L. Ruiz, Jr. taken 8/31/81 @ 6:00 PM. fw
3	76	DEPOSITION of Laurel D. White taken 8/31/81 @ 1:30 PM. fw
3	77	DEPOSITION of Leroy Frederick taken 8/31/81 @ 3:10 PM. fw
3	78	DEPOSITION of Alan Friess taken 8/26/81 @ 10:15 AM. w/exhibit. fw
3	79	DEPOSITION of Joseph W. Monsanto taken 9/1/81 @ 2:30 PM. fw

DATE	NR	PROCEEDINGS
8	80	DEPO of Jeffrey Goldstein, taken 9/1/81 @ 9:30 AM. fw
Sept. 4	81	DEPO of Serge Vedieu taken 9/2/81 @ 12:55 PM. fw
4	82	DEPO of Cestmo; LeBlanch taken 9/2/81 @ 12:45 PM. fw
4	83	DEPO of Vilgard Milfort taken 9/2/81 @ 12:20 PM. fw
4	84	DEPO of Wagestrand Lombard taken 9/2/81 @ 12:10 PM. fw
4	85	DEPO of Pierre Silien taken 9/1/81 @11:15 AM. fw
4	86	DEPO of Severbien Jean Louis taken 9/1/81 @ 10:00 PM. fw
4	87	DEPO of Steven David Forester taken 9/1/81 @ 6:40 PM. fw
8	88	NOTICE of filing add. affidavits, by pltfs. fw
9	89	NOTICE of filing add. affidavits, by pltfs. fw
9	90	ORDER (ALH) Granting pltf's mot for leave to file supp pldg and 2nd amended complt. (EOD 9/15/81-CCAP) fw
9	91	TRANSCRIPT of hrg. 9/2/81 before Judge Hastings pgs 1 thru 156. fw
15	92	TRANSCRIPT 0 hrg. 9/8/81 @ 4:40 PM before Judge Hastings pgs 1 thru 192. Vol. I. fw
18	93	LETTER to Judge Hastings re: Fils-Aime Schiller from Vera A. Weisz.fw
18	94	RENEWED Mot for civil contempt as to defts for non compliance w/previous court orders, by pltfs. fw

DATE	NR	PROCEEDINGS
18	95	WRITTEN submission pursuant to 28 C.F.R. 16.21, by plfts. fw
18	96	NOTICE of tkg depos on 9/25/81 of Frank Lyons @1:30 and James Spear @ 3:30 PM; 9/28/81 of Hugh Brian @ 10:00 AM and Paul Schmitd @ 1:00 PM and Joan Arrowsmith @ 3:00 PM; on 10/1/81 of Francis Maiolo @ 10:00 AM, Tom Ragnow on 10/2/81 @ 9:30 AM & Gordon Sacks @ 3:00 PM and on 10/5/81 of Joe Howerton @ 9:00 AM, Hon. Neil Foster @ 1:00 PM and Hon Henry Scroope @ 4:00 PM, by pltfs. fw
21	97	MOTION to Intervene, by Southern Cristian Leadership Conference. (Complaint of intervenors attached). rw
21	98	MOTION to waive court costs, by Southern Cristian. rw
21	99	REQUEST for admissions, by Southern Cristian. rw
21	100	TRANSCRIPT of proceedings at hearing on 9/9/81. (Pages 1-126). rw
21	101	TRANSCRIPT of proceedings at hearing on 9/3/91. (Pages 1-67). rw
22	102	AFFIDAVIT of Vera Weisz re deportation of Haitians. rw
22	103	EMERGENCY MOTION for stay of deportation and for a hearing thereon, by Pltfs. rw

DATE	NR	PROCEEDINGS
22	104	ORDER (SMA) granting stay 9/24/81 of deportation. (EOD-9/28/81-CCAP). rw
25	105	CONSENT MOTION for ext of time to 9/25/81 to answer, with memo, by defts. rw
25	106	CONSENT motion for ext of time to 9/28/81, with memo, by defts. rw
28	107	Copy of letter to the court from defts re order of 9/9/81. rw
28	108	MOTION to dissolve temporary Restraining order, by defts. rw
28	109	MEMO in support of above motion, by defts. rw
30	110	MOTION to strike M/DS and to enter default judgment. rw
30	111	Motion to compel, by plfts. rw
30	112	CONSENT MOTION and memo for ext of time to resp to mot to intervent, by defts. rw
30	113	MOTION to dismiss or transfer, by defts. rw
30	114	MEMO in supp of their mot to dismiss or transfer and for trial, by defts. rw
30	115	ORDER (ALH) granting temporary restraining order. (EOD-10/5/81-CCAP). rw
Sep. 30	116	ORDER (ALH) granting pltfs' Motion for Class Certification. Class is certified and defined as noted herein. (EOD-10/5/81-CCAP). rw
Oct. 1	117	MOTION for clarification of Court's order granting class certification, by pltfs. rw

DATE	NR	PROCEEDINGS
2	118	SUPPLEMENTAL with respect to vol withdrawals, by defts. rw
6	119	ORDER (ALH) : TRO entered 9/30/81 has dissolved and is converted into and to be cont'd as a Preliminary injunction. Defts are enjoined from deporting all Haitian aliens who have arrived in the Southern District of Florida on or after 5/20/81 who applying for entry into the U.S. and presently held in detention facilities. See order for further details. (EOD-10/10/81-CCAP). rw
7	120	MOTION for ext of time to resp to pltfs' motions, by defts. rw
7	121	RESPONSE to order to produce, by defts. rw
6	122	NOTICE of In Camera submission on voluntary withdrawals, by defts. rw
13	123	NOTICE of filing supp. affidavit of Lawrence M. Linden, by pltfs. fw
13	124	MOTION to dissolve or modify the prel. inj. and TRO and immediate hearing, by defts. fw
13	125	MOTION and memo to file memo in excess of 20 pages, by defts. fw
13	126	MEMO in supp. of mot to dissolve or modify the prel inj. and TRO and for immediate hrg, by defts. fw
14	127	MOTION and memo for enl. of time to resp. to mot to intervene of Southern Christian Leadership Conf., by deft. fw

DATE	NR	PROCEEDINGS
14	128	MOTION and memo for enl. of time to respond to pltfs' mot for cert. of class, by deft. fw
19	129	MEMO in opp to motion to compel prel. statement, by defts. fw
19	130	MOTION & memo for ext. of time, by defts. fw
19	131	REPLY to pltfs' renewed motion for civil contempt, by defts. fw
19	132	REPLY to pltfs' motion to dismiss and to enter default judgment, by defts. fw
19	133	NOTICE of filing documents enumerate in defts' resp to Order to produce on 10/7/81, by deft. fw
19	134	NOTICE of tkg depo of Charles Sava 10/23/81 @ 10:00 AM, by pltfs. fw
20	135	MEMO in opp to motion to intervene by Southern Christian Leadership Conf., by deft. fw
20	136	RESPONSE to pltfs' mot for clarification of crt's order granting class certification, by defts Doris Meissner, et al. sj
22	137	DEPOSITION of Judge Neale S. Foster taken 10/5/81 @ 10:10 AM. fw
22	138	DEPOSITION of Henry G. Scroope, Jr. taken 10/5/81 @ 2:10 PM. fw
21	139	LETTER to Richard A. Marshall. AUSA re: "voluntarily return" to Haiti, from Ira J. Kurzban. fw
23	140	NOTICE of tkg depo on 11/4/81 @ 1:00 PM of Patrick Baussan, @ 10:00 AM of Pierre M. Armand; on

DATE	NR	PROCEEDINGS
		11/6/81 @ 3:00 P.M. of Phillip Talleyrand @ 10:00 AM of Gary Menard and on 11/13/81 @ 10:00 AM of Rev. Jean Juste., by defts. fw
27	141	DEPOSITION of Ernest Michael Trominiski taken 8/27/81 @ 2:30 PM. fw
27	142	LETTER to Mr. Kurzban re: provide you w/notice should Haitians desire to return to Haiti, from R. Marshal, Jr. AUSA. fw
OCT. 28	143	ORDER (CA for ALH) pltfs to respond within 5 days to motion to dissolve or modify prel inj and TRO. (EOD 10/29/81-CCAP) fw
29	144	MOTION to enlarge time to answer defts' mot to dissolve prel inj, by pltfs. fw
29	145	NOTICE of supp. citation for defts' memo in supp. of mot to dismiss or transfer and for trial, by defts. fw
29	146	MOTION to file memo in opp to defts' memo in supp. of their mot to dismiss or transfer and for trial in excess of twenty pages, by plfts. fw
29	147	MEMO in opp to defts' memo in supp. of their mot to dismiss or transfer and trial, by pltfs. fw
30	148	EMERGENCY MOTION and memo to shorten time for pltfs' to respond to motion to dissolve prel inj & TRO and for immediate hrg., by defts. fw
30	149	MOTION to shorten time to comply w/discovery requests w/memo, by defts. fw

DATE	NR	PROCEEDINGS
30	150	CERTIFICATE of service for discovery requests by defts. fw
30	151	INTERROGS and requests to produce documents, by defts. fw
* 29	152	ORDER (CA for ALH) pltf shall have 14 day ext. to resp. to defts' mot to dissolve prel inj. (EOD 11/2/81-CCAP) fw
NOV 2	153	EMERGENCY motion for stay and for continuance of TRO, w/memo, by pltfs. fw
4	154	MOTION & memo for emergency hrg. on defts' mot to dissove prel inj. and TRO for immediate hrg w/memo, by defts. fw
5	155	ORDER (SMA) action defts outline in letter to Chief Justice 10/29/81 deportation and repatriation of four hundred (435) Haitian aliens who defts claim wish to w/draw appl. for admission to USA and return to Haiti prohibited by previous orders of Judge Hastings. (EOD 11/5/81-CCAP) fw
5	156	NOTICE of status conference on 11/6/81 @ 9:00 AM before Judge Kehoe on defts mot to dissolve prel inj, etc., by defts. fw
6	157	RESPONSE to defts' motion to shorten time to comply w/discovery requests w/memo, by pltf. fw
9	158	LETTER to Mr. Marshal re: to inform you that as of 5:00 pm on 11/5/81

DATE	NR	PROCEEDINGS
		neither Phillip Talleyrand nor Gary J. Enard have been served w/notices of deposition for 11/6/81, by Haitian Refugee Ctr. Vera A. Weisz. fw
9	159	NOTICE to produce witnesses at trial 11/9/81 @ 3:00 PM, by petitioners. fw
11	160	LIST of proposed questions, by defts. fw
11	161	QUESTIONS to be presented to special master. by pltfs. fw
11	162	NOTICE of filing affidavit of Bonny Depeine, by pltfs. fw
12	163	MEMO in opp to defts' mot to dissolve or modify the prel inj. and TRO and for immediate hrg., by pltfs. fw
13	164	REPLY memo in supp. of pltfs' mot to compel tkg of depos, by pltfs. fw
NOV. 13	165	DEPOSITION of Doris M. Meissner taken 9/1/81. fw
13	166	NOTICE of filing depo of David W. Crosland, III 9/1/81, by defts. fw
* 2	167	LETTER to Judge Atkins re: repatriating Haitians who have withdrawn their applications for admission, from Richard A. Marshall, Jr. AUSA. fw
* 2	168	LETTER to Judge Aronovitz re: Prepared to transport Haitians from USA and Puerto Rico wishing to return to Haiti from Richard A. Marshall, Jr. AUSA. fw

DATE	NR	PROCEEDINGS
13	169	ORDER (JWK) apptg special master-Joel Hirschhorn, Esq. and interpreter Viviane Boulos special master's interpreter. (EOD 11/17/81-CCAP) fw
14	170	ORDER (JWL) Modifying prel inj. as to those Haitians having withdrawn applications for admission (List attached). (EOD 11/17/81-CCAP) fw
19	171	MOTION and memo of law to assign this case to a Judge for all purposes, by Govt. fw
19	172	CERTIFICATE of service, by USA. fw
19	173	MOTION for class action decertification, by deft. fw
19	174	MEMO of law in support of mot to decertify class and for hrg., by Govt. fw
24	175	MEMO in response to defts' motion to modify prel inj as to Haitians seeking voluntary repatriation at Ft. Allen, PR., by pltfs. fw
23	176	ORDER (JWK) Modifying prel inj.: as to those individuals whose names and Immigration "A" file nos. are listed on attached schedule. (EOD 11/25/81-CCAP) fw
24	177	MOTION to modify prel inj. as to Haitians seeking vol. repatriation at Ft. Allen, PR., by defts. fw
25	178	NOTICE of filing corrected mot and memo to modify prel inj. as to Haitians seeking voluntary repatriation at Ft. Allen, by defts. fw

DATE	NR	PROCEEDINGS
25	179	MOTION to modify prel inj. as to Haitians seeking vol. repatriation at Ft. Allen, P.R., by defts. fw
25	180	MEMO in supp. of mot to modify prel inj. as to Haitians seeking repatriation at Ft. Allen, P.R., by defts. fw
25	181	ORDER (JWK) Deft's mot to modify prel inj Granted and defts may immediately repatriate upon entry of this order all Haitians located at Fort Allen, P.R. who have or will w/draw appl. for adm. into U.S. Finds this cause certified as class action. (EOD 12/1/81-CCAP) fw
DEC. 2	182	CERTIFICATE of service of motion to decertify class and for hrg., by pltfs. fw
3	183	ORDER OF REASSIGNMENT to Calendar of Judge Eugene Spellman. (EOD 12/3/81-CCAP, by P. T., Clerk. fw
Dec 7	184	MOTION to reconsider order of 11/25/81, modifying repliminary injunction and to clarify and modify portions, and in the alternative for an injunction pending appeal; and memo in supp, by plfts. cs
8	185	MEMO in opp to mot for decertification and in supp of mot for clarification, by pltfs. cs
8	186	STATUS memo, by Government. cs
7	187	ORDER (EPS) setting status conference for 12/8/81, at 9:30. (EOD-12/9/81-CCAP). cs

DATE	NR	PROCEEDINGS
3	188	CERTIFICATION of the Clerk JIB to reassign cause on a districtwide basis. Clerk notifies en banc that cause by virtue of random selection is reassigned permanently to EPS, and all pleadings hereinafter filed in cause to bear the number 81-1260-CIV-EPS. cs
3	189	ORDER (CCA) granting government's mot to reassign and reassignment. (EOD-12/9/81-CCAP). cs
9	190	ORDER (JWK): Pltfs mot for reconsideration of court's order of 11/25/81 modifying preliminary injunction is denied. (EOD-12/11/81-CCAP). cs
11	191	TRANSCRIPT of trial hearing on 1/25/81, Pages 2 thru 40. cs
11	192	TRANSCRIPT of trial hearing on 11/14/81, Pages 2 thru 40. cs
11	193	MOTION for leave to file memo in excess of 20 pages, by pltfs. cs
11	194	ORDER (EPS) granting pltf's mot to compel. (EOD-12/14/81-CCAP). cs
11	195	ORDER (EPS) for pretrial conference and notice of trial. P/T conference on 3/5/82, at 9:00. Non jury trial to begin on 3/15/82 at 9:00. (EOD-12/14/81-CCAP). cs
11	196	ORDER (ESP) denying pltf's mot to strike defts' mot to dismiss and for entry of a default judgment. (EOD-12/14/81-CCAP). cs

DATE	NR	PROCEEDINGS
14	197	MOTION and supp memo for ext of time within which to respond to pltf's mot for preliminary injunction and reply to pltf's mot to file a memo in excess of 20 pages, by Government. cs
15	198	RESPONSE to Government's mot and supp memo for ext of time within which to respond to pltfs' mot for preliminary injunction, by pltfs. cs
15	199	MOTION and supp memo for ext of time within which to respond to pltf's mot to reconsider the order of 11/25/81, by Government. cs
15	200	ORDER (EPS) granting mot for ext of time up to and including 1/8/82, in which to file responsive pleading. (EOD-12/16/81-CCAP). cs
16	201	STATUS report, by government. cs
DEC 17	202	SECOND notice to produce, by pltfs. cs
17	203	STATUS report, by pltfs. cs
17	204	NOTICE of taking deposition as to the following: , January 20th, 1982. Bureau of Prisons or INS Officer in charge of facility at 8:30. Chief Legal Officer for INS at facility or in Dist Office 7 at 11:30. District Director of District 7 at 2:00 Gordon Sacks, ILJ at 4:00.

DATE	NR	PROCEEDINGS
		January 21, 1982: Bureau of Prisons or INS Officer in charge of facility at 12:00 Chief Legal Officer for INS at facility at 2:00 Chief INS Officer for area at 4:00. January 22, 1982: INS Officer in charge of facility at 8:30 Chief Legal Officer for facility at 11:00 Charles Sava, District Director at 2:00 James Spear, ILJ at 4:00 Frank Lyons, ILJ at 5:00. January 25, 1982: James Poulio at 9:00 INS Central Officer in charge of overseeing detention of Haitians at 11:00 Hugh Brian at 12:00 Alan Nelson at 2:00 January 26, 1982: Paul Schmidt at 9:00 Joan Arrowsmith at 10:00 Tom Ragnow at 12:00 Rudolph Guiliani at 2:00 January 27, 1982 Bureau of Prisons or INS Officer in charge of facility at 12:00 Chief Legal Officer for INS at facility or in district at 2:00 District Director of area at 4:00

DATE	NR	PROCEEDINGS
		January 29, 1982 Bureau of Prisons or INS Officer in charge of facility at 9:00 Chief Legal Officer for INS at facility or in district at 11:00 District Director for area at 1:00.
		February 1, 1982 Bureau of Prisons or INS Officer in charge of facility at 9:00 Chief Legal Officer for INS at facility or in district at 11:00 District Director of area at 2:00. cs
		February 2, 1982 Bureau of Prisons or INS Officer in charge of facility at 9:00 Chief Legal Officer for INS at facility or in district at 11:00 District Director for area at 2:00
		February 5, 1982 INS Officer in charge of facility at 9:00 Lolita Semidey at 11:00 District Director of District 27 at 2:00
		February 8, 1982 Assistant District Director Metcalf at 9:00 Chief Legal Officer, INS District 6 at 10:30 Joe Howerton at 12:00 Sidney Majure at 3:00. cs
17	205	NOTICE to produce, by pltfs. cs
18	206	STATUS Report re Motion to Intervene, by AUSA Moseley. pk

DATE	NR	PROCEEDINGS
21	207	REPLY to pltfs' memo in opp to mot for decertification and in supp of mot for clarification, by defts. cs
22	208	RESPONSE to defts interrogatories, by pltfs. cs
22	209	RESPONSE to request for production, by pltfs. cs
22	210	ORDER (EPS) rendering Government's mot for ext moot. (EOD-12/29/81-CCAP). cs
23	211	ORDER (EPS) setting hearing on pltf's mot for preliminary injunction filed on 12/11/81. Hearing set on pltf's mot during two week period beginning on 1/18/82. Exact date date to be fixed at a future time. All proceedings will be held in North Courtroom of U.S. Dist. Courthouse. (EOD-12/29/81-CCAP). cs
28	212	NOTICE of taking deposition duces tecum of records custodian of INS on 1/11/82, at 4:00 cs
28	213	MOTION for expedited discovery, by pltfs and memo. cs
31	214	*ANSWER*, by defts Doris Messner, Joe Howerton, Lee Rowland, Fred Alexander and INS and William French Smith. cs
30	215	MOTION to compel discovery, by defts. cs
1982		
Jan 4	216	NOTICE of filing, by respondents. cs
4	217	MOTION for protective order with respect to the taking of depo, by government. cs

DATE	NR	PROCEEDINGS
4	218	DECLARATION, by M. Demarco Johnson. cs
4	219	REPLY to mot for expedited discovery, by government. cs
4	220	ORDER (EPS): Cause is reset for hearing at 9:00 on 1/11/82. Deft shall indicate to court what information, sought by pltf, is available through INS computers with regard to Krome Avenue facility. Deft inform court what information is retrievable prior to date of hearing on mot for preliminary injunction is set to begin and which information can be available by trial date. All information retrievable prior to hearing shall be produced for pltf pursuant to this order. (EOD-1/8/82-CCAP). cs
8	221	SUPPLEMENTAL response to pltfs' mot for civil contempt, cs
8	222	MOTION and memo for leave to file a memo in excess of 20 pages, by U.S.A. cs
8	223	REPLY memo in opp to pltf's mot for preliminary injunction, by government. cs
11	224	RESPONSE to defts' opposition to expedited discovery, by pltfs. cs
11	225	MEMO in opp to defts' mot for protective order and for partial mot for civil contempt as to Paul Schmidt and INS judges., by pltf. cs
13	226	RESPONSE to deft's mot to compel, by pltf's. cs

DATE	NR	PROCEEDINGS
11	227	ORDER (EPS): Deft provide to pltfs by 1/27/82 statistical info of undocumented and falsely documented aliens detained for exclusion hearings since 5/20/81, and those who have since been paroled, indicating nationality of the alien. Court notes defts mot to compel is presently rendered moot by pltfs' ans to interrog. Defts mot for a protective order with respect to taking deposition is granted. Pltfs' mot for order adjudging pltfs in civil contempt is held in abeyance by court, until court determines with certainty the scope of class to be certified in the case for purposes of trial. (EOD-1/14/82-CCAP). cs
14	228	NOTICE of filing, by government. cs
14	229	MOTION to consolidate hearing on mot for preliminary injunction with trial on the merits, by government. cs
14	230	AFFIDAVIT of Steven R. Abrams. cs
15	231	RE-NOTICE of tkg depos of James Pulio @9:00, INS Officer @11:00, Hugh Brian @12:00 and Alan Nelson @2:00 all on 1/22/82 in Washington, D.C., by pltfs. mc
15	232	MOTION to strike affirmative defenses, by pltfs. mc
15	233	NOTICE of filing declaration of Alan C. Nelson in oppo to pltfs' mot for prel injunction, by defts. mc
18	234	RESPONSE to second notice to produce, by pltfs. cs

DATE	NR	PROCEEDINGS
19	235	RESPONSE to request for production of documents, by defts. cs
19	236	NOTICE of filing affidavit in opp to pltf's mot for a preliminary injunction. cs
19	237	REPLY to mot to strike affirmative defenses, by pltf. cs
20	238	NOTICE of taking deposition as to Haitian Refugee Center, Inc., on 2/9/82, at 10:00. cs
20	239	MOTION and memo for protective order, by U.S.A. cs
21	240	COPY of letter from Ira J. Kurzban, Esq., to Thomas Moseley, AUSA, re: discovery and depositions. cs
21	241	RE-NOTICE of taking deposition as to Rev Jean JUSTE, on 1/29/82, at 10:00. cs
21	242	NOTICE of additional authorities, by U.S.A. cs
22	243	MOTION and memo for leave to file a memo in excess of 20 pages. cs
22	244	MOTION to intervene as defts, by State of Florida, ex rel. cs
22	245	ORDER (EPS): Pltfs and defts to file a memo in response to mot to intervene within 5 days from date of order. (EOD-1/22/82-CCAP). cs
22	246	NOTICE of filing affidavits, by pltfs of the following: George Cooper; Arthur C. Helton; Rabbi Herbert M. Baumgard; M. Athalie Range; Claudia Slovinsky; Jacques G.

DATE	NR	PROCEEDINGS
		Rapoport; Gisele Birnbaum and Church World Sdrvice, HIAS: Lutheran Immigration and Refugee Service; Migration and Refugee Services, United States Catholic Conference; World Relief, Young Men's Christian Association. cs
22	247	NOTICE to produce persons for trial as noted herein, by pltfs. rw
22	248	MOTION for protective order or clarification, by pltf. rw
23	249	MOTION to compel for sanctions and responses to mot for protective order, by pltfs. rw
24	250	MOTION to compel documentary requests, by pltfs. rw
26	251	NOTICE of hearing special appointment on 2/1/82, at 9:00. cs
27	252	MEMO in opp to mot to intervene as defts of State of Florida, ex rel., Sim Smith and Jim Smith, by pltfs. cs
27	253	REPLY to mot to intervene by State of Florida, by government. cs
28	254	REPORT on data available with respect to parole of undocumented aliens, by defts. cs
28	255	STIPULATION of settlement, by all parties cs
28	256	STIPULATION and ORDER (EPS): mot of the SCLC to intervene is granted and intervention complaint of SCLC is dismissed without prejudice. (EOD-2/1/82-CCAP-M-). cs

DATE	NR	PROCEEDINGS
29	257	ORDER (EPS) Consolidating hearing on mot for a preliminary injunction with trial on the merits on 3/1/82 at 9:30. (EOD-2/1/82-CCAP). cs
FEB. 1	258	*ANSWER* and defenses of applicants for intervention. cs
Jan. 29	259	REPLY to pltfs' mot to compel for sanctions and response to mot for protective order, by pltfs. cs
29	260	REPLY to pltfs' mot to compel documentary requests, by government. cs
29	261	RESPONSE to pltf's mot for protective order or clarification, by pltf. cs
Feb. 3	262	LETTER from Thomas E. Moseley, AUSA, to EPS, re: court's request of two draft order. cs
3	263	NOTICE of submission, by Government. cs
1	264	ORDER (EPS) to show cause why court should not appt expert to prepare a statistical analysis of evidence pertaining to Pltfs' claims of discrimination, returnable on 2/1/82 at 2:00. (EOD-2/5/82-CCAP).
2	265	NOTICE of appearance of Michael J. Rosen, Esq. as trial counsel on behalf of American Civil Liberties Union.
2	266	ORDER (EPS) denying the motion of the State of Florida to intervene. If and when relief Pltfs seek is granted the State may renew its motion. (EOD-2/5/82-CCAP).
5	267	MOTION for clarification, by pltfs. cs

DATE	NR	PROCEEDINGS
5	268	ORDER (EPS) on pending motiong: 1. Motion for protective order is denied in part and granted in part. 2. Motion to compel testimony of alan Nelson is Granted but motion for sanctions id denied. 3. MOTION to compel production is granted as noted in (a) to (p) of order. (EOD-2/9/82-CCAP)!
8	269	NOTICE of filing affidavit of Michael P. Di Raimondo, by defts.
8	270	LETTER to the Court from U.S. Atty re Haitian crewmen.
8	271	NOTICE of filing proposed order re TRO, by U.S. Atty.
9	272	MOTION for partial clarification of court's dicovery order of 2/5/82. by pltf. cs
9	273	NOTICE of additional authorities, by Thomas E. Moseley, AUSA cs
9	274	RESPONSE to motion for clarification, by pltfs. cs
10	275	REQUESTED response to order on discovery mots dated 2/5/82, by government. cs
10	276	MOTION and memo for leave to file additional interrogatories, cs
12	277	COPY of letter from Ira J. Kurzban, Esq. to Thomas Moseley, re: receipt of letter of 2/9/82. cs
12	278	COPY of letter from Ira J. Kurzban, Esq., to Thomas Moseley, re: deposition. cs

DATE	NR	PROCEEDINGS
12	279	NOTICE of taking deposition of Monsignor Bryan Walsh, on 2/16/82, at 11:00. cs
16	280	MOTION for master's and interpreter's fees and expenses, by Joel Hirschhorn. cs
16	281	MASTER'S report and recommendations cs
16	282	NOTICE of taking deposition as to Rudolph W. Giuliani, on 2/23/82, at 10:00. cs
16	283	MOTION and memo to take deposition of Rudolph W. Giuliani, by pltf. cs
16	284	NOTICE of taking deposition as to Haitian Refugee Center, Inc., on 2/21/82, at 10:00. cs
17	285	TRANSCRIPT of hearing on 11/23/81, pages 2 through 67. cs
17	286	RE-NOTICE of taking deposition, as to Haitian Refugee Center, Inc., on 2/23/82, at 10:00. cs
17	287	MOTION for ext of time within which to submit documents in camera, by defts. cs
9	288	ORDER (EPS) denying decertification and granting modification of class and preliminary injunction. (EOD-2/18/82-CCAP). cs
10	289	NOTICE of taking deposition as to the following: (SEE attached list). cs
11	290	RESPONSE to defts' mot and memo for leave to file additional interrogatories, by pltfs. cs

DATE	NR	PROCEEDINGS
11	291	RESPONSE to defts' requested response to discovery, by pltfs. cs
12	292	ORDER (EPS) setting pretrial conference, on 2/26/82, at 3:30. (EOD-2/18/82-CCAP). cs
12	293	SECOND ORDER (EPS) on pending discovery motions. (See order for details.). EOD-2/18/82-CCAP). cs
16	294	SECOND set of interrogatories and requests to produce documents, by defts. cs
17	295	MOTION for ext of time within which to submit documents in camera, by deft. cs
19	296	COPY of letter from Joel Hirschhorn, Esq., to Vera A. Weisz, Esq., re: enclosure of copy of critificate of Service. cs
19	297	TRANSCRIPT of hearing on 11/9/81, at 3:00, pages 2 through 146. cs
19	298	MEMO in opp to pltf's mot to take depo of Associate Attorney General of U.S., by Government. cs
18	299	ORDER (EPS): Court will proceed on basis of pleadings no before it and vacates order directing pltfs to file an amended complaint. (EOD-2/23/82-CCAP). cs
22	300	MOTION to postpone trial until completion of discovery, by pltfs. and memo in supp of mot. cs
22	301	MEMO in supp of mot for leave to take deposition of Rudolph Guilaiani, by pltfs. cs

DATE	NR	PROCEEDINGS
22 **	302	ORDER (EPS) granting mot for ext of time up to and including 2/22/82. (EOD-2/23/82-CCAP). cs
23	303	DEPOSITION of Monsignor Bryan Walsh, on 2/15/82, at 3:05. cs
23	304	DEPOSITION of Gerard Jean Juste, on 2/9/82, at 3:40. cs
23	305	MEMO in opp to pltf's mot to postpone trial, by government. cs
23	306	SUPPLEMENTAL memo with respect to pltf's mot for leave to take depo of Rudolph Guiliani, by pltfs. cs
25	307	TRANSCRIPT of hearing on 2/1/82, pages 2 through 111. cs
25	308	TRANSCRIPT of hearing on 2/9/82, pages 2 through 19. cs
25	309	TRANSCRIPT of hearing on 1/11/82, pages 2 through 125. cs
23	310	ORDER (EPS) awarding and assessing master's and interpreter's fees and expenses. Master is awarded the sum of $7,556.25 for fees, and additional sum of $3,576.67 as expenses. Interpreter is awarded the sum of $2,450.00 as fees, and additional sum of $150.00 for expenses. Defts pay to Joel Hirschhorn, Esq., the sum of $7,556.25 by way of Master's fees and the sum of $3,576.67 for reimbursement of out-of-pocket expenses, for a total of $11,132.92. Deft pay to Vivian N. Boulous, translating services the sum of $2,450.00 for interpreter's fees and

DATE	NR	PROCEEDINGS
		$150.00 for reimbursement of out-of-pocket expenses, for a total of $2,600.00 (EOD-2/25/82-CCAP). cs
26	311	TRANSCRIPT of cont'd hearing on 2/2/82 (Pages 1-100). rw
26	312	MOTION for leave to file reply w/memo, by pltf. br
24	313	MEMO OPINION AND ORDER (EPS) Grantin deft. motion to dis in part. (See order for details) EOD-3/1/82-CCAP) br
26	314	SUPPLEMENTAL MEMO in support of motion to leave to take depo of Rudolph Guiliani, by pltf. br
26	315	MOTION to strike trial w/memo, by pltf. br
26	317	MOTION for permission to file Amicus Curiae in support of motion, American Immigration Lawyers Association. br
26	318	MEMO in support of motion, by American Lawyers Association Amicus Curiae. br
22	320	MOTION and memo for leave to file a reply to defts' memo in opp to pltfs' mot to take deposition of the Associate Attorney General of the U.S., by pltfs. cs
Mar. 1	321	DEPOSITION of Hugh J. Brien, on 2/19/82, at 10:10. cs
1	322	DEPOSITION of James A. Puleo, on 2/19/82, at 2:17. cs
1	323	DEPOSITION of Alan C. Nelson, on 2/18/82, at 10:11. cs

DATE	NR	PROCEEDINGS
1	324	OATH to volunteers (EPS-3/1/82), of the following people: cs Yolanda Mellon — Wendy Ehrenkranz Karen Flax — Frank Citera Steve Davis — Susan Aprill Carol Schoffel — Barry Silver Carol Norris — Francis Carroll Alan Petrine — Joe Chambrot Bradshaw Lotspeich — Stacie Cohen Daniel E. Sommers — Tony E. Marin cs
1	325	MEMO in supp of mot for leave to retake depositions of Ferro, Nelson and Brien in District for Attorney's fees, costs and other relief, by pltfs. cs
1	326	MOTION for leave to retake deposition of Ferro, Nelson and Brien in this District and for attorney's feex, costs and other relief, by pltfs. cs
1	327	MOTION and memo for protective order, by pltfs. cs
1	328	COPY of letter from Robert L. Bombaugh, attorney Commercial Litigation Branch Civil Division, to EPS, re: documents. cs
1	329	SUPPLEMENTAL lists of witnesses for pltfs. cs
1	330	NOTICE of taking depositions of the following: Allen Nelson on 3/4/82, at 9:00. Hugh Brien on 3/4/82, at 2:00. Rudolph Guiliani on 3/5/82, at 9:00. Vern Jervis on 3/6/82, at 10:00. Andrew Carmichael on 3/6/82, at 2:00.

DATE	NR	PROCEEDINGS
		David Hiller on 3/8/82, at 9:00. Paul Schmidt on 3/8/82, at 1:00.cs
1 **	331	NOTICE of taking deposition of District Directof of Miami Joe Howerton, on 3/10/82, at 10:00. cs
3	332	ORDER (EPS-3/2/82) sealing documents submitted for in camera inspection by court. (EOD-3/3/82-CCAP). cs
3	333	NOTICE of filing volumes of documents submitted, by Government. cs
	334	NOTICE of filing documents that were ordered produced out of 3 vol of in camera material submitted, by defts. cs
3	335	NOTICE of filing one volume of documents submitted by defts for in camera inspection. cs
** 2	336	PRETRIAL stipulation, by both parties. cs
2	337	PROPOSED pretrial stipulation, by defts. cs
2	338	RESPONSE to court order on taking deposition of David Hiller, Paul Schmidt, Andrew Carmichael, and Vern Jervis, by pltfs. cs
3	339	REPLY to pltfs' response to additional depositions, by Government. cs
3	340	ORDER (EPS 3/2/82) substituting party deft. Alan Nelson be substituted as named deft in action and prior deft Doris Meissner be dropped as party to cause. (EOD-3/4/82-CCAP). cs

DATE	NR	PROCEEDINGS
4	341	RESPONSE to mot and memo to strike trial attorneys from defts' trial witness list, by pltf. cs
4	342	RESPONSE to pltf's notice to produce witnesses, by government. cs
4	343	MOTION and memo to modify order on pending mots, by government. cs
4	344	MOTION and memo for protective order with respect to the time for deposition of Leonard Rowland. cs
4	345	RESPONSE to pltf's mot and memo for protective order and cross mot for protective order, by defts. cs
4	346	REPLY to pltfs' response to additional depositions, by deft. cs
4	347	NOTICE of filing, by Thomas E. Moseley. cs
4	348	EXAMINATION before trial of James W. Grable on 2/17/82, at 12:30. cs
4	349	EXAMINATION before trial of Benedict Ferro on 2/17/82, at 2:30. cs
3	350	ORDER (EPS-3/3/82) granting in part and denying in part pltf's mot to take depositions of Mr. Hiller and Mr. Schmidt is granted, the mot to take depositions of Mr. Carmichale and Mr. Jervis is denied and mot to retake Mr. Brian's deposition is granted. (EOD-3/9/82-CCAP). cs
3	351	ORDER (EPS-3/3/82) setting hearing for 3/10/82, at 1:30. EOD-3/9/82-CCAP). cs
3	352	ORDER (EPS-3/3/82) on pending motions. Mot for permission to file

DATE	NR	PROCEEDINGS
		memo in supp of pltfs' mot for a preliminary injunction is denied. Pltfs' mot to postpone trial until completion of discovery is granted but request to proceed with hearing on mot for a preliminary injunction is denied. Trial will start on 3/15/82 at 9:30. and pretrial confernece to be held on 3/12/82 at 9:30. Mot to retake depo of Mr. Nelson is granted. Mot to retake Mr. Ferro's depo is denied. Mot to Take Mr. Guiliani is granted. Pltfs mot for leave to file reply to defts memo in opp to pltfs' mot for a preliminary injunction is granted. Memo filed by defts in response to plft's mot for protective order within 5 days from date of order. (EOD-3/9/82-CCAP). cs
Mar	4	353 ORDER (EPS-3/4/82) enjoining the transfer of class members from their present locations. (EOD-3/9/82-CCAP). cs
	5	354 ORDER (EPS 3/5/82) granting deft's mot for protective order with regard to deposition of Leonard Rowland and Granting mot to modify the pretrial. (EOD-3/9/82-CCAP). cs
	8	355 FIRST supplemental witness list, by government. cs
	8	356 DEPOSITION designations, by governments. cs
	9	357 NOTICE of additional authorities, by government. cs

DATE	NR	PROCEEDINGS
10	358	OBJECTIONS and cross designations, by governments. cs
10	359	NOTICE of filing, by pltfs. cs
9	360	ORDER (EPS-3/9/82) denying mot to strike without prejudice. (EOD-3/11/82-CCAP). cs
9	361	ORDER (EPS-3/9/82) on cross motions for protective orders. Both parties refrain from using method of discovery not set forth and no discovery to conducted in violation of any of the provisions of Red rules. There shall be no interviews unless opposing counsel is notified as required and all rule's other requirments are complied with. Violations of this order will result in the imposition ~~of sa~~ctions. (EOD-3/11/82-CCAP). cs
9	362	ORDER (EPS-3/9/82): Affirmative defense numbers 2, 3, 7, and nine are moot in light of court's order of dismissal dated 2/24/82. Said affirmative defenses are hereby dismissed. (EOD-3/11/82-CCAP). cs
11	363	RESPONSE to deft's refusal to produce witnesses, by pltfs. cs
15	364	DEPOSITION of Joe D. Howerton, taken 3/10/82. rw
15	365	DEPOSITION of Leonard E. Rowland, taken 3/8/82. rw
15	366	PROPOSED Stip of Guidelines for access to detention facilities, by Pltfs. rw

DATE	NR	PROCEEDINGS
15	367	MOTION for leave to transfer Class Members, by defts. rw
15	368	CROSS-NOTICE of add'l authority, by pltfs. rw
16	369	DEPOSITIONS OF: (Filed under Seal) Hugh Brien, taken 3/3/82 Paul W. Schmidt, taken 3/3/82 Alan C. Nelson, taken 3/4/82 Rudolph W. Giuliani, taken 3/5/83 David Dean Miller, taken 3/5/82 rw
16	370	STIPULATON regarding intervention of Dade County Bar Association Haitian Refugee Volunteer lawyer Task Force, by INS. cs
16	371	ORDER (EPS-3/16/82) approving stip regarding intervention of Dade County Bar Association Haitian Refugee Volunteer Layer Task Force. (EOD-3/18/82-CCAP). cs
18	372	MOTION for leave to transfer class members, by U.S.A. cs
19	373	JOEL HIRSCHORN, as special master, is precluded from testifying at trial. cs
19	374	TRIAL memo concerning admissibility of testimony at prior proceeding, by pltfs. cs
22	375	DESIGNATION of interrogatories and request for admissions, by pltfs. cs
22	376	MEMO in response to deft's claim of privilege to deny admission of memo into evidence, by pltfs. cs
22	377	DESIGNATION of depositions, by pltfs. cs

DATE	NR	PROCEEDINGS
12	378	PRETRIAL memo of Amicus Curiae, State of Florida, by attorney general. cs
26	379	MEMO in opp to deft's mot for leave to transfer class member, by pltfs. cs
26	380	MEMO in supp of mot for leave to transfer class members, by defts. cs
29	381	OBJECTIONS and cross designations, by governments. cs
29	382	MOTION to dism, by government. cs
29	383	SUPPLEMENTAL designation of depositions, by pltfs. cs
29	384	TRIAL memo concerning judicial notice, by defts. cs
29	385	ORDER (EPS-3/26/82) granting in part and deying in part defts mot for permission to transfer class members. (EOD-3/30/82-CCAP). cs
29	386	MOTION to compel responses to interrogatories and request for production of documents, by defts. cs
Apr. 2	387	NOTICE of filing, by pltfs. cs
5	388	AMICUS' memo in opp to pltfs' mot for preliminary injuction, by pltfs.
5	389	MOTION for rehearing and memo in supp of mot. by pltfs. cs
6	390	MEMO by Judge Spellman requesting the resealing of box of documents. cs
6	391	MOTION to rpoduce statistical data and memo in supp. by pltfs. cs

DATE	NR	PROCEEDINGS
7	392	ORDER (EPS-4/6/82) dening plfts request for preliminary injunction and renewed mot for preliminary injunction will be consolidated with the trial on the merits, and ct will reserve ruling on the propriety of relief sought therein until trisl is concluded. (EOD-4/8/82-CCAP). cs
12	393	MOTION and memo to vacate order granting permission to transfer class members, by defts. cs
13	394	REPLY to mot to produce statistica data, by pltfs. cs
13	395	CROSS design ations of depositions, by defts. cs
16	396	PRETRIAL conference transcript taken on 3/12/82, pages 2 through 97. cs
16	397	TRANSCRIPT of hearong on mot to transfer, taken 3/24/82, pages 2 through 84, cs
16	398	TRANSCRIPT of final hearing on 3/15/82, pages 2 through 288, vol. I. cs
16	399	TRANSCRIPT of continued final hearong on 3/16/82, pages 289 through 487, vol II. cs
16	400	TRANSCRIPT of final hearong on 3/17/82, pages 488 through 675, vol. III. cs

DATE	NR	PROCEEDINGS
16	401	TRANSCRIPT of continued final hearing on 3/18/82, pages 676 through 875, vol IV. cs
16	402	TRANSCRIPT of continued final hearing on 3/19/82, pages 876 through 1083, vol V. cs
16	403	TRANSCRIPT of continued final hearing on 3/22/82, pages 1084 through 1328, vol VI. cs
16	404	TRANSCRIPT of continued final hearing on 3/23/82, pages 1329 through 1504, vol VII. cs
16	405	TRANSCRIPT of continued final hearing on 3/24/82, pages 1505 through 1665, vol VIII. cs
16	406	TRANSCRIPT of continued final hearing on 3/24/82, pages 1666 through 1826, vol IX. cs
16	407	TRANSCRIPT of continued final hearong on 3/30/82, pages 1827 through 2045, vol X. cs
16	408	TRANSCRIPT of continued final hearing on e/31/82, pages 2046 through 2215, vol XI. cs
16	409	TRANSCRIPT of continued final hearing on 4/1/82, pages 2216 through 2426, vol XII. cs
16	410	TRANSCRIPT of continued final hearing on 4/2/82, pages 2427 through 2515, vol XIII. cs

DATE	NR	PROCEEDINGS
16	411	MOTION and memo to preclude rebuttal witnesses and documents, by pltf. cs
16	412	SUBMISSION on Haitian Refugee Center v. Civiletti as rebuttal, by pltfs. cs
19	413	ORDER (EPS-4/19/82) vacating order, granting defts' mot for leave to transfer class members.
21	414	COPY of letter from Ira J. Kruzban, esq., to Thomas Moseley, U.S. Attorney, re: filing of notice of taking deposition. cs
22	415	MOTION for submission of decision, by pltfs. cs
26	416	RESPONSE to court order requesting the establishment of a Nationwide Haitian Pro Bono representation program, by defts. cs
26	417	OBJECTIONS and cross designations, by pltfs. cs
23	418	NOTICE of rebuttal witnesses and documents, in camera, by pltfs. cs
29	419	TRANSCRIPT of continued final hearing on 4/19/82, pages 2516 through 2766. cs
29	420	TRANSCRIPT of continued final hearing on 4/20/82, pages 2767 through 2857. vol XV. cs
29	421	TRANSCRIPT of continued final hearing on 4/26/82, pages 2858 through 3069, vol XVI. cs

DATE	NR	PROCEEDINGS
29	422	TRANSCRIPT of continued final hearing on 4/27/82, pages 3070 through 3317, vol. XVII. cs
21	423	NOTICE of taking deposition on 4/23/82, at 3:00, of person or persons who created and have entered data into INS Krome Computer, and on 4/23/82, at 5:00, of person or persons who were responsible for creating and keeping numerical records. cs
May 5	424	ORDER (EPS-4/29/82) sealing document. (EOD-5/3/82-CCAP). (Docket # 418 sealed in vault of office of clk. cs
3	425	OBJECTIONS to deft's cross designations, by pltfs. cs
4	426	ORDER (EPS-4/29/82): Exhibits offered into evidence on which the ct reserved ruling: Pltfs 114, 115, 117, 132, 133, 182, 183, 186, 187, 190, 191, 192, 195 and 196. (EOD-5/5/82-CCAP). cs
*Aor 30	427	ORDER (EPS-4/29/82) granting pltfs 24 hours to designate files they wish to copy. (EOD-5/5/82-CCAP). cs
30	428	ORDER (EPS-4/30/82) admitting plts exhibits 10 and 11 into evidence. (EOD-5/5/82-CCAP). cs
30	429	ORDER (EPS-4/29/82) clarifying court's order of 4/19/82. (EOD-5/5/82-CCAP). cs
May 4	430	Motion for continuance, by pltfs. cs

DATE	NR	PROCEEDINGS
6	431	PROPOSED findings of fact & conclusions, by Govn't. cs
6	432	RESPONSE on cross designations, by govn't. cs
6	433	MOTION & memo for leave to file oversize brief, by govn't. cs
6	434	NOTICE of filing, by govn't. cs
7	435	NOTICE of filing, by pltf. cs
6	436	POST trial brief & proposed findings of fact & conclusions by pltf. cs
7	437	MOTION for a 24 hour ext. of time by pltf. cs
10	438	POST trial memo of AMIGUS CURIAE, State of Florida. cs
10	439	NOTICE of submissions, by govn't. cs
11	440	NOTICE of filing corrected copies of pltfs' post trial brief & proposed findings of facts & conclusions, (pltf) cs
11	441	REPLY brief, by pltfs. cs
12	442	MOTION & memo for ext. of time until 5/14/82, to file report with respect to reunification, by govn't. cs
17	443	FINDINGS of facts & conclusion w/ respect to discrimination by pltf. br
21	444	RESPONSE of Amicus Ciroae to pltfs' mot. to strike. rw
20	445	PRELIMINARY status report, by govn't. rw
26	446	NOTICE of filing papers attached (Opinion of Appeals court) rw
June 1	447	MEMO & memo for appt. of special master, by defts. rw

DATE	NR	PROCEEDINGS
8	448	RESPONSE to Court Order requestin report on reunification of families, by defts. fw
14	449	NOTICE of filing the final report of the Grand Jury, filed 5/11/82 by pltfs. rw
14	450	MOTION for ext. of time to respond to request for appt. of special master by pltfs. rw
14	451	REPLY to pltfs' mot. for ext. of time, by pltfs. rw
18	452	MEMO opinion (EPS-6/18/82.) lw
23	453	PLAN for release by pltf. lw
22	454	HEARIN memo, by deft. lw
25	455	MEMO in supp. of emergency mots. to intervene, to vacate gag order & to vacte order limition public & press access to negotiations, by Post Newsweek Stations.
25	456	REQUEST for expedited hearing, by Miami Daily News. lw
25	457	REQUEST for emergency hearing, by Post-Newsweek Stations, Fla. Inc. lw
25	458	MEMO in supp. of mot. to intervene & to vac various orders impacting first amendment rights, by Miami Daily News. lw
25	459	MOTION to intervene & to vac various orders, etc by Miami Daily News. lw
25	460	EMERGENCY mots. to intervene, to vac gag order, to vac order denying access to degotiations of parties, by Post-Newsweek Stations. lw

DATE	NR	PROCEEDINGS
25	461	ORDER (EPS 6/25/82) 1. granting mots. of Miami Daily News, Inc, Post-Newsweek 2. denying their mot. to vacate Gag order. 3. denying their mot. to vacate order limiting public & press access to negotiations.
June 25	461	ORDER (EPS 6/25/82) continued from previous entru. 4. Ct's order restraining parties from commenting re: final judgment in this cause & any matters re: thereto until exec of said document in open court by EPS 6/29/82 at 10:00, cont in full force & effect. 5. denying mot. to vacate order limiting public & press access to negotiations as it has been superceded by gag order. 6. dism intervening parties based on stated findings & conclusions. EOD 6/30/82 CCAP-M) lw
29	462	MOTION to intervene, by Louisa Edmond, Louisamund Edmond, Frank Verne Lomaine Fidogene, Odetta Baptist, Marie claude Loguerre & Germaine Lumaine. (att proposed petn for writ of haveas corpus) lw
29	463	MEMO in supp of mot. to intervene, by above-named proposed intervenors. lw

DATE	NR	PROCEEDINGS
22	464	LETTER to EPS, 6/25/82 from richard J. Ovelmen, re: req. that said letter be treated as a formal emergency mot. for leave to intervene & to app before Ct. on behalf of the Miami Hearld Publishing Co.
29	465	MOTION & memo for stay pending appeal, by defts. lw
29	466	MOTION & memo to modigy final judgment & alt. for partial stay pending appeal, by defts. lw
30	467	*NOTICE OF CROSS-APPEAL* filed by pltfs. from the order grantin deft. mot to dismiss in part entered 2/24/82 & from the order entered 6/18/82 styled memo opinion & from the order rntered 6/29/82 styled final judgment & from the order entered 6/29/82 denying pltfs. mot for reconsideration. (cc USCA & all counsel of record) rd
29	468	NOTICE of intention to proceed with rule making & renewed request for stay. rd
29	469	FINAL JUDGMENT (EPS 6/29/82) referring to Ct's 6/18/82 opinion & subsequent hearing on 6/23/82 to det effect of Ct's ruling. New detention policy is null § void & policy re parole, that was used prior to 5/20/81 is in full force & effect. St. believes that remedy that best serves int of all parties to litigarion is an in-

DATE	NR	PROCEEDINGS
		terim palan for release of pltfs on parole subj to conditions set forth pending a determinstion of their claims for admission. ORDERED: 1. Final judgment entered in favor of defts as to Count VII of Complt. 2. Final judgment entered in favor of pltfs as to Count II of Complt. 3. Defts are enjoined from enforcing their policy of detaining excludable aliens unless they est to INS' sat a claim for admission. Inj shall not be construed to preclude detention of excludable aliens deemed a security rist or likely to abscond. 4. Defts. are enjoined from cont to detain pltfs herein & are ordered to release said individuals. 5. Implementation of #4 is to be commenced forthwith in accordance w/terms & conditions set forth in this judgment. (see court file for detailed info) 6. Granting mot of Haitian Refugee Center, Inc. to enlarge class to include all Haitians in detention for whom a G-28 has been filed on behalf of said pltfs. Said indiv are included w/in said class & are bound by full effects of Ct's opin-

DATE	NR	PROCEEDINGS
		ion of 6/18/82 & provisions of final judgment. 7. Ct vacates any interlocutory orders entered by Ct or by predecessor Judge & does relinquish jurisdiction over the members of said class to ext that same is not hereafter retained by Ct. 8. Ct retains jurisdiction over parties & subj matter on a) defts' mot to vac Ct' order enjoining exclusionary hearings relative to members of class who are not rep by either private or pro bono counsel b) Ct's order of 2/8/82 as the same pertains to the pro bono program of the Dade County Bar Assn c) Pltf's mot ordering granting of relief to indiv members of class who have escaped from detention to be entitled to benefits of Ct's opinion of 6/18/82 & Ct's final judgment d) enforcement of the terms & conditions of this final judgment e) pltf's mot for award of attys' fees & all costs w/understanding that retention of jurisdiction as to that issue is not a det of merits of entitlement of

DATE	NR	PROCEEDINGS
		pltfs to either attys' fees or costs. (EOD 7/2/82-CCAP-M) (The class certified by the Court is indicated on page 2 of the docket sheet) lw
29	470	ORDER (EPS-6/29/82) denying pltfs' mot for reconsideration of Ct's order of dism. Granting pltfs' mot to amend the class; class is modified to include all indiv who would be w/in the class as defined by for the fact that they are rep by counsel. Pltfs are directed to provide notice of modification to those indiv not previously members of this class. Said indiv have 20 days to notify Ct of their intention to opt out of this action or they will be deemed members of class herein & subj to all requirements. Class mod expressly exempts from its purview those indiv subj of Judge Robert L. Carter's Order & the 2nd Circuit's recent opinion which Ct understands to be 53 indiv. This order is part of Ct's final judgment, which is now final as to all counts. Class as modified shall be entitled to all of relief afforded by final judgment. (EOD 7/2/82-CCAP-M) lw
30	471	ORDER (EPS-6/30/82) denying defts' mot for a stay of Ct's entire final judgment. Defts' mot for a partial stay, w/regard to prospective effects

DATE	NR	PROCEEDINGS
		of final judgment, will be taken under advisement for a period of 10 days. (EOD 7/2/82-CCAP) lw
30	472	ORDER (EPS-6/30/82) denying defts' mot for modification of the class. Denying defts' mot to amend final judgment to permit prospective application of detention policy for 10 days. Ordered nunc pro tunc to 11:00 A.M., 6/30/82. (EOD 7/2/82-CCAP) lw
30	473	*NOTICE of appeal* filed by defts. from the final judgment entered 6/29/82. (cc USCA & all attys. of record) this appeal was filed in open court. . . rd
30	474	AMICUS memo supporting mot. to modify final judgment or for partial stay. (Atty. General, cc USCA) rd
July 2	475	ORDER (EPS) GRANTING dmot. for partial stay; on 6/30/82, the Court indicated that under no circumstances would it stay the release of the pltfs now in detention but, upon a proper showing of an intent to engage in rulemaking & a likelihood of irreprabale harm during the interim a stay would be considered w/ regard to aliens who arrive in the future. On 7/1/82 defts filed a not. of intent tp proceed w/rulemaking, on 7/2/82 St. of Fl filed their renewed mot to intervene w/mot for part. stay, consistent w/information

DATE	NR	PROCEEDINGS
		obtained your affiant fears a renewed in flux of Hatian & other aliens if the cts judgment (6/29/82) is not stayed. ORDERED that the portion of cts final judgment 6/29/82 is stayed for a period of 30 days, defts shall publish not of their intent to engage in rulemaking w/regard to detention no later than 30 days after this order, failure to do so will result in the lifting of this stay. EOD-7/7/82 7/2/82-EPS. rd
2	476	RESPONSE to mot to intervene by Louisa Edmond, et al. (govn't) rd
7	477	MOTION to enforce final judgment, 1. following the issuance of final judgment (6/29/82) pltfs MARCELIN & MEME filed petitions of writ of habeas corpus seeking release from Krome Det. Center based on final Judgment which enjoined from the cont. to detain pltfs. 2. said petition fell into division of Judge Aronovitz 7/2/82. 3. SMA on said pet. in open ct. ordered both pltfs be severed & habeas corpus be transferred to Judge Spellman for consolidation w/81/1260 for cinsideration by Judge Spellman. (pltfs.)
8	478	ORDER (EPS-7/8/82)-1) Atty Rubin shall w/i 5 days from ent. of this order comply with Local Rule 10 by filing memo in support of said mot. & serv. copy of said mot. to enf. final

DATE	NR	PROCEEDINGS
		judgment w/memo, on counsel for Pltfs & State of Fl, 2) Atty Rubin (in addition) shall w/i 5 days file signed statement exec. by Sylvain Marcelin & Fignole Meme indicating their individual intent as to whether or not they desire to reamin members of the class heretofore certified by this Court or, in alternative to opt out of said class therby not being bound by Court's June 18th, 1982 opinion & Final Judgment—and in event they so opt, Court, when satisfied that decision is a free & voluntary one, will enter order removing them from the class & all. them to proceed as they deem advisable in a separate suit, 3) Pltf's counsel w/i 5 days from service of said mot. & memo wil file w/Court a response indicating whether named individuals are in fact members of certified class of pltfs herein & whether or not they intend, in the future, to represent their interests w/regard to this matter, 4) Mot. heretofore filed to enforce final judgment be & the same is hereby held in abeyance pend. filing of above & foregoing pleadings. (EOD-7/12/82) ai
9	479	*NOTICE OF APPEAL* by Intervenor Miami Daily News from 1) Oral Order ent. 6/24/82 directing trial

DATE	NR	PROCEEDINGS
		participants, inc. esp. parties & their respective counsel, to refrain from discussing with public or press contents of proposed order which court circulated to parties & their attorneys, 2) Oral Order ent. 6/24/82 sealing file on captioned matter so that neither public nor press would have direct acess to Court's proposed Order, & 3) Court's written Order of 6/25/82—"Order Gtf Pltfs' Mot. to Intervene, Denying Pltf's Mot. to Vacate Gag Order & denying Pltfs' Mot. to Vacate Order Limiting public & press Access to Negotiations". (Copies to USCA, Ct Rept, Joseph P. Averill, Esq., Ira Kurzban, Esq., Bruce Winick, Esq., Michael J. Rosen, Esq., Robert Bombaugh, Esq-Dept of Justice, Jay Brant, Esq-Asst U.S. Atty, Jim Peters, Esq-Asst Atty General) ai
9	480	RESPONSE to Motion to Enforce Final Judgment. (Govt) ai
12	481	CLASSMEMBERS' letters pursuant to court's request. (letters submitted (15) from attys, throughout US, representing various incarcerated Haitian Refugees) rd
16	482	TRANSCRIPT of hearing before Judge Spellman, held 2/26/82 pgs. 1-93. rd

DATE	NR	PROCEEDINGS
16	483	TRANSCRIPT of pre-trial confrence held 3/1/82, before Judge Spellman, pgs. 1-137. rd
16	484	TRANSCRIPT of closing argument of pltfs. before Judge Spellman held 5/14/82, pgs. 1-210. rd
16	485	TRANSCRIPT of contnued closing arguments before Judge Spellman held 5/18/82, pgs. 1-160. rd
16	486	TRANSCRIPT of hearing held 6/28/82, pgs. 1-196, before Judge Spellman. rd
16	487	TRANSCRIPT of hearing held 6/29/82, before Judge Spellman pgs. 1-128. rd
16	488	TRANSCRIPT of hearing held 6/30/82, before Judge Spellman pgs. 1-71. rd
16	489	TRANSCRIPT of hearing before Judge Spellman, held 7/2/82 pgs. 1-103. rd
19	–	RECORD on appeal trans. to USCA, consisting of 17-vol. plead, 45-vol. trans., 3-acc. fold. depos., exhibits retained in Judges office. rd
14	490	AMENDED certificate of service (Miami Daily News) rd
13	491	MEMO of law in support of mot. to enforce judgment. rd
21	–	FIRST SUPP. record on appeal trans. to USCA, consisting of 5-boxes (4-boxes of exhibits & 1-box depsos) The balance of the exhibits are in EPS-office. rd

DATE	NR	PROCEEDINGS
16	492	NOTICE of Publication of Rule Making on 7/9/82, at Vo. 47, No. 132 of the Federal Register. (GOVT) ai
20	493	ORDER of USCA-Denying Govt's Motion for Partial Stay of judgment ent. 6/29/82. (7/13/82-CA) (82-5772) (EOD-7/22/82-M) ai
20	494	ORDER of USCA-Denying affidavit & statement of American Council of Voluntary Agencies for Foreign Service, Inc., considered tog. as motion for leave to file a brief as amicus curiae. (7/13/82-CA) (EOD-7/22/82-M) ai
22	495	TRANSCRIPT of Hearing held on 6/24/82, pages 1-24. (9:00 A.M.) ai
22	496	TRANSCRIPT of Hearing held on 6/24/82 at 4:45 P.M., pages 1-10. ai
22	–	SECOND SUPPLEMENTAL Record on Appeal transmitted to USCA – 2 vols transcript. ai
23	497	*NOTICE OF APPEAL* filed by intervenor the Miami Hearld, SEE DOCKET NO. 479 (IDENTICAL PLEADING) (CC I. KURZBAN, BRUCE WINICK, MICHAEL ROSEN, ROBERT BOMBAUGH JAY BRANT, JIM PETERS, VERA WEISZ, STEEL, HECTOR & DAVIS & JOSEPH AVERILL) rd
19	498	ORDER (EPS 7/16/82) The following Haitian asylum applicants in detention by INS in New Orleans are

DATE	NR	PROCEEDINGS
		LOUISA EDMOND, LOUISAUAD EDMOND, FRANK VERNE, LOMIANE FIDOGENE, ODETTE BAPTIST, MARIE LAQUERRE and GERMAINE LUMAINE are included in class of pltfs. in this lawsuit & bound by prior orders & final judgment in this case. That if any litigation has been brought on behalf of these named Haitians seeking release, that action shall be dismissed by counsel for these named Haitians w/i 10 days of date of the order. (EOD 7/27/82) gc
29	499	MEMO of law in support of pltfs' request for costs for expert fees & attys fees. (pltfs) rd
29	500	LETTER w/attached corrected copy of above entry. (doc. no. 499) rd
29	501	MOTION for attys fees & costs. (pltf) rd
Aug. 6	502	*COPY* of "comments on the interim rule concerning detention & parole of aliens. (Ira Kurzban) rd
12	503	MOTION for Enlargement of Time & Memo of Law. (Defts) ai
06	503a	Comments on the interim Rule concerning Detention & Parole of Aliens dll
16	504	NOTICE of taking depositions., SEE ATTACHED SCHEDULE A. rd
17	505	MEMO in opposition to motion for enlargement of time to respond to request for fees and costs. (defts) rd

DATE	NR	PROCEEDINGS
17	506	ORDER (EPS) the folowing organizations be & hereby are appointed as independent third parties to whom reports are made; Barry University, Miami Shores, Florida Graduate School of Social Services, NY, NY EOD/ 8/20/82 8/12/82-EPS. rd
20	507	REQUEST for expedited consideration of motion for protective order & to stay discovery. (defts) rd
20	508	MOTION for protective order (defts) rd
23	509	MEMO in Response to Defts' Request for a Protective Order & Request for Hearing. (Pltfs) ai
24	510	ORDER (EPS-8/24/82) granting defts' motion for protective order, hearing set for 8/30/82 at 9:00 A.M. EOD 9/1/82.
27	511	STATUS report. (Federal defts)
31	512	DEPOSITION of JERRY WYNNE, taken 8/24/82, pgs. 1-33 plus miscel. plead.
27	513	ORDER (8/27/82-EPS) hearing set for 8/30/82 has been re-set for 9/3/82 at 9:00 am. EOD 9/3/82. rd
30	514	ORDER (EPS-8/30/82) granting deft's mot for an ext of time to respond to pltfs' mot. to tax costs & for award of attys. fees. EOD/M 9/3/82. rd
31	515	MOTION for a hearing or alternatively to appoint a Special Master. (pltfs) rd
Sept. 7	516	NOTICE of Filing of affidavit of Bruce J. Winick, Esq., & Irwin P. Stotzky, Esq. gc

DATE	NR	PROCEEDINGS
3	517	SUPPLEMENTAL petition for costs & fees by pltfs. gc
13	518	LETTER from Arthur C. Helton to Judge Spellman dated 9/10/82 re an a report at an appreance in this matter on 9/13/82. Attachments to letter. gc
13	519	ORDER (EPS 9/8/92) attys organizing nationwide pro bono program appear at hearing on 9/13/82. (EOD 9/20/82) gc
13	520	ORDER (EPS 9/8/82) Pltf's. ore tenus mot. to strike contractual provision precluding voluntary agencies from settling class members w/ extended family members in State of Fla. denied. w/o prejudice. (EOD 9/20/82) gc
17	521	MOTION for enlargement of time & memo of law. (defts) rd
20	522	MOTION to release Haitians in detention at Fort Allen. rd
22	523	ORDER (EPS 9/21/82) 1. it is the Court's intent to have representatives of the defts appear & make presentations at said seminars. 2. copies of these documents should be sent to Mr. Leiden & Mr. Arrango. EOD 9/28/82 rd
28	524	NOTICE of deportation of class member by USA. gc
Oct. 7	525	MEMO of Law in Support of Motion to Release Haitians detained at Fort Allen. (Efren Rivera) ai

DATE	NR	PROCEEDINGS
8	538	ADDITIONAL supplement to memo in support of motion for atty's fees & costs, by pltf. rmw
8	539	AFFIDAVITS in suport of motion for atty's fees & costs, by pltf. rmw
Oct* 27	540	ORDER (EPS-9/27/82) granting motion for ext of time to resp to pltf's motion for atty's fees and costs. Defts have up to and including 10/8/82 w/in which to resp to motion. (EOD-11/15/82-CCAP). cs
Nov. 12	541	ORDER (EPS-11/10/82) granting motion for ext of time to resp to pltf's motion for atty's fees and costs. up to and including 11/8/82. (EOD-11/15/82-CCAP). cs
23	542	MOTION of supplementary affidavits of Ira J. Kurzban & Bruce J. Winick by pltfs. rmw
23	543	AFFIDAVIT of Ira J. Kurzban. rmw
23	544	AFFIDAVIT of Bruce J. Winick. rmw
Dec. 9	545	STATUS report, by gov't. rmw
16	546	COPY of letter from Ira J. Kurzban to Leon B. Kellner, Esq., dated 12/14/82 re "Status Report". rmw
1983	547	REPORT of the Court's Committee on Haitian refugees. rmw
Jan. 6	548	ORDER: (EPS-1/4/83) setting hearing for 2/17/82. rmw
6	549	REQUEST for status conference & entry of order, by pltfs. rmw

DATE	NR	PROCEEDINGS
Feb. 8	550	MOTION to modify order of 6/29/82, by defts. NR____ rmw
8	551	MEMORANDUM in support of above mot, by defts. rmw
8	552	DECLARATION of Craig O. Raynsford. rmw
11	553	ORDER: (EPS-2/9/83) setting prehearing conference for 2/16/83. (EOD/2/24/83-CCAP) rmw
24	554	MEMORANDUM in support of request to consider paragraph 8 of final judgment, by pltfs. rmw
24	555	MEMORANDUM in support of this Court's authority to effectuate its judgment of 6/29/82, by pltfs. rmw
24	556	MEMORANDUM on issue of whether this court has jurisdiction to order the executive branch to expend funds by gov't. rmw
Mar. 1	557	MEMORANDUM in support of modification of final judgment, by intervenors Jim Smith, Atty. Gen. & State of Fla. rmw
1	558	RECOMMENDED criteria for authorized secondary migration, by State of Fla. rmw
1	559	MOTION for civil contempt & memo, by pltfs. NR____ rmw
2	560	MOTION in response to modification of paragraph 5G of this Court's order of 6/29/82, by pltfs. NR____ rmw
2	561	REPLY to deft's memo on issue of whether this Court has jurisdiction to

DATE	NR	PROCEEDINGS
		order the executive branch to expend funds, by pltfs. rmw
3	562	REPLY to memo in support of this Court's authority to effectuate its judgment of 6/29/82, by gov't. rmw
3	563	MEMORANDUM in opp to pltf's request to consider paragraph 8 of the order of 6/29/82, by defts. rmw
15	564	PARTIAL ORDER: (EPS/3/9/83) Gov't's mot to modify the injunction which prohibits the holding of exclusion proceedings for class members not represented by counsel shall be postponed for at least 75 days pursuant to the Gov't's request made in open court. Pltf's mot to have the Court compel gov't to expend funds to effectuate this Court's Final Order is moot. Pltf's mot that the Court hold the Gov't in civil contempt for violating the Court's order of 2/17/83 denied. (EOD/3/16/83-CCAP) rmw
07	565	PARTIAL ORDER ON COMMITTEE REPORT: (EPS/2/28/83) (See file for details) rmw
22	566	ORDER: (EPS/3/21/83) Court adopts Robie plan for class members represented by pro bono counsel with modifications & additions. (See court file) (EOD/3/25/83-CCAP) rmw
22	567	ORDER: (EPS/3/21/83) Exclusion hearing procedure for class members

DATE	NR	PROCEEDINGS
		represented by pro bono counsel. (See file for details) (EOD/3/25/83-CCAP) rmw
Apr. 11	568	MOTION for order granting access to detained class members, by pltfs. NR____ rmw
11	569	MEMORANDUM in support of above mot, by pltfs. rmw
15	570	MEMORANDUM opinion & ORDER: (EPS/4/14/83) denying pltfs' mot to have the Court extend the benefits of the Court's Final Judgment to those class members who escaped detention prior to the entry of the Court's Final Judgment. (EOD/4/18/83-CCAP) rmw
15	571	MEMORANDUM opinion & ORDER: determination of venue or change of venue shall be dealt with & ruled upon as to each member of the class by the Immigration judge to whom said alien case is assigned in the same manner & based upon the same standard as would apply to any alien similarly situated. (See court file for further details) (EOD/4/18/83-CCAP) rmw
18	572	RESPONSE to pltfs' mot for order granting access to detained class members, by intervenor, State of Florida rmw
May 09	573	ORDER: (EPS-5/6/83) denying as moot pltf's mot to obtain access to

DATE	NR	PROCEEDINGS
		class members who arrived in So. Fla. on or after 4/4/83 & are currently being detained by the INS. (EOD/5/10/83-CCAP) rmw
19	574	MOTION for civil contempt agst Richard Sharkey & the District Director of Immigartion & Naturalization Service, District IV, w/memo, by pltfs. rmw
19	575	MOTION for order granting pltf's request for atty's fees, costs & expenses, w/memo, by pltfs. rmw
20	576	ORDER (EPS 5/20/83) on pltf's motions for civil contempt against Richard Sharkley & the District Director, INS, District IV and for entry of an Order granting pltf's request for atty's fees, costs, & expenses, & the Court having reviewed said motions & being otherwise duly advised in the premises; that defts shall respond to said motions w/in 10 days from date of this order (EOD 5/24/83-CCAP). ltj
24	577	SUBMISSION of supplemental authority, by pltfs. ltj
27	578	SUPPLEMENTAL motion & memo of law amending request for atty's fees in light of recent authority, by pltfs. ltj
June 1	579	MOTION & memo of law for enlargement of time, by defts. ltj

DATE	NR	PROCEEDINGS
2	580	MOTION & memo of law for a continuance of the 6/10/83 hearing, by defts. ltj
7	581	MOTION & memo of law for enlarge- of time, by defts. ltj
2	582	RESPONSE to pltfs' motion for atyt's [sic] fees, costs & expenses, by deft. ltj
9	583	OPPOSITION to defts' response regarding atty's fees, continuation of the 6/10/83 hearing & motion for enlargement of time, by pltfs. ltj
9	584	ORDER (EPS 6/8/83) granting motion for continuance of 6/10/83 hearing & resetting hearing for 9:30 a.m. on 8/26/83. (EOD 6/9/83-CCAP). ltj
10	585	RESPONSE to motion for civil contempt by deft. ltj
10	586	ORDER (EPS 6/9/83) resetting hearing on deft's motion to partially modify final judgment is rest to 9:30 a.m. on 9/22/83. (EOD 6/10/83-CCAP). ltj
10	587	ORDER (EPS 6/9/83) granting motions for extension of time. Defts' shall have up to & including 6/2/83 w/in which to respond to the motion for atty's fees & up to & including 6/10/83 w/in which to respond to the motion for civil contempt. (EOD 6/10/83-CCAP). ltj
14	588	AMENDED ORDER (EPS 6/13/83): that the order dated 6/9/83 is amended & the hearing on deft's motion to partially modify final judgment is

DATE	NR	PROCEEDINGS
		reset to 9:30 a.m. on 9/19/83. (EOD 6/14/83-CCAP). ltj
July 27	589	MOTION to proceed pro hac vice pursuant to local rule 4(F), by petitioners, Carole Wood, Joyce Wilkerson & Leonard Rieser. ltj
29	590	ORDER (EPS 7/29/83): on the motion for injunction pending appeal filed by Philadelphia pltfs. ordered that defts shall file a response to said motion w/in 20 days from the date of this order. (EOD 8/5/83-CCAP). ltj
29	591	ORDER (EPS 7/28/83) to proceed pro hac vice (1) petitioners, Carol Wood, Joyce Wilkerson & Leonard Rieser may proceed pro hac vice to file a a [sic] motion to stay execution proceedings on behalf of Philadelphia pltfs; (2) Carole Wood is designated lead counsel; and (3) the local designation requirement is waived. (EOD 8/5/83-CCAP). ltj
Aug. 4	591A	MEMO of law in support of motion for injunction pending appeal, by pltfs. ltj
4	592	MOTION for injunction pending appeal, by pltfs. ltj
8	593	ORDER (EPS 8/5/83): concerning pltfs' motion for an emergency hearing on the matters presented in the motion requesting an injunction; shall be heard at a time to be determined upon the court's receiving the

DATE	NR	PROCEEDINGS
		defts' response to the proposed agreement outlined above. (EOD 8/8/83-CCAP). ltj
12	594	ORDER (EPS 8/12/83): that all deportations of class member shall be stayed up to & including 8/28/83. Defts shall respond to said motion by 8/18/83. The court shall consider this matter between 8/18 & 8/28 & notify the parties as to how this issue should be addressed in light of the posture of the case. (EOD 8/15/83-CCAP). ltj
19	594A	MEMO in opposition to pltfs' motions for an injunction pending appeal & 72 hours notice, by defts.
29	595	ORDER (EPS 8/26/83): temporarily re-extended stay pending determination of motions extended until 9/16/83 @ 5:00 p.m. This order & the prior orders of this court relative to this matter has not application to staying any exclusionary hearings that are now in rpogress [sic] & it is the intent of this order that such exclusionary proceedings shall continue unless otherwise ordered by this court. (EOD 8/30/83-CCAP). ltj
Sept. 13	596	MOTION & memo of law for a continuance of the 9/19/83 hearing, by defts. ltj
15	597	ORDER (EPS 9/13/83): granting motion for continuance of the 9/19/83

DATE	NR	PROCEEDINGS
		hearing & setting status conference on 11/9/83. The purpose of said status conference is to set a new date for hearings relative to defts' motion to partially modify the final judgment to permit exclusion hearings to proceed w/o lawyers. (EOD 9/15/83-CCAP). ltj
16	598	MEMO opinion & ORDER (EPS 9/15/83): denying pltfs motions to enjoin exclusion proceedings for & deportation of class members & granting pltfs' motion for 72 hours notice prior to effecting physical deportation. (EOD 9/19/83-CCAP). ltj
22	599	MOTION & memo in support to reconsider memo opinion, by pltfs. ltj
26	600	ORDER (EPS 9/23/83): denying motion to reconsider memo opinion & order. (EOD 9/26/83-CCAP). ltj
NOV. 08	601	APPLICATION for special appearance by Christopher Keith Hall Esq. dl
22	602	MOTION to withdraw without prejudice defts' mot to partially modify the the final judgment to permit exclusion hearings to proceed without lawyers. by defts. dl
DEC. 15	603	ORDER (EPS-12/09/83) granting mot to withdraw wo/prej mot for modification of F/J (EOD-CCAP-12/16/83) dl

DATE	NR	PROCEEDINGS
16	604	ORDER (EPS-12/14/83) Setting hearing on 2/03/84 @ 9:30 a.m. (EOD-CCAP-12/19/83) dl
28	605	MOTION for ext of time by deft. jes
1984		
JAN. 6	606	MEMORANDUM in opp to pltf's request for award of costs by, deft. jes
17	607	ORDER (EPS-01/12/84) granting defts mot for ext of time up to & incl 01/06/84 for filing response to pltfs mot for tax costs (EOD-01/18/84 CCAP). jes
27	608	ORDER (EPS-1/25/84) Resetting hearing on 2/3/84 & 3/7/84 (EOD-CCAP-1/30/84 dl
FEB. 09	609	REPLY to defts' memo in oppo to pltff's reques [sic] for an award of costs, by pltffs. dl
MAR. 20	610	ORDER OF DISMISSAL by USCA by motion of appellant, Rule 42, FRAP and Rule 16 (EOD-3/27/84) by clerk dl
May 8	611	ORDER by USCA denying motion of appellees for stay. (USCA 5/4/84) (82-5772) (EOD-5/16/84-M-CCAP). c
8	612	ORDER by USCA denying petition for rehearing. (USCA 5/4/84) (82-5772) (EOD-5/16/84-M-CCAP) c
8	613	MANDATE OF USCA-order of District Ct in this cause DISMISSED IN PART, REVERSED IN PART and

DATE	NR	PROCEEDINGS
		REMANDED WITH INSTRUCTIONS + each pty bear their own costs. (USCA 5/4/84) (82-5772) (EOD-5/16/84-M-CCAP) ch
June 12	614	ORDER EPS 6/8/84): on mandate that w/in 20 days from the date of this order pltfs shall file a memo of law reflecting their position. (EOD 6/14/84-CCAP). ltj
19	615	REPORT for Barry University. ltj
20	616	MOTION for enlargement of time in which to file brief, by pltfs. ltj
July 6	617	ORDER (EPS 7/5/84) granting m/for extension of time to include 8/20/84 (EOD 7/10/84-CCAP). lcc
Aug. 21	618	MOTION w/memo in support for leave to file brief in excess of 20 pgs, by pltf. lcc
21	619	MEMORANDUM on effect of Issuance of mandate, by pltf. lcc
Sept. 11	620	MOTION for extension of time to respond to order on mandate, for a 30 day extesnion, by deft. lcc
11	621	MEMORANDUM in support of m/for extension of time, by deft. lcc
*10	622	ORDER (EPS 9/6/84) granting leave to file brief in excess of 20 pages (EOD 9/12/84-CCAP). lcc
25	623	ORDER (WPS 9/19/84) granting defts' motion for ext of time w/i which to file memo in resp to court's 6/8/84 order up to & incl 10/13/84 (EOD 9/28/84 CCAP) mas

DATE	NR	PROCEEDINGS
Oct. 15	624	MEMO in response to order on mandata & pltf's memo, by defts. ltj
1985		
JUNE 19	625	NOTICE of reliance on addtl authority, by pltfs. mas
JULY 5	626	SUPPLEMENTAL Memo in support of Atty's fees expenses and costs under the equal access to justice act. by pltf jl
22	627	MEMO in Resp. to pltf's Suppl. Memo on Atty's fees., [sic] by deft. vp
24	628	SUPPLEMENTAL AFF. of atty's feess [sic] for M.J. Rosen from 3/7/84 to 3/25/85. vp
24	629	SUPPLEMENTAL AFF. of atty's fess [sic] for M.J. Rosen from 8/9/82 to 3/25/85. vp
24	630	SECOND SUPP. AFF. of Robert E. Juceam. vp
24	631	SUPPLEMENTAL AFF. of Atty's fees for B.J. Winick from 5/17/83 to 7/23/85. vp
24	632	SUPPLEMENTAL AFF. of Atty's fees for I.J. Kurban from 5/17/83 to 7/3/85. vp
24	633	SUBMISSION of Bills for Costs & Expen. for 5/16/83 to 7/22/85.
24	634	SUBMISSION of Costs, Expen. & Fees to 7/1985, by pltfs. vp
24	635	AFFIDAVIT of Irwin P. Stotzky.. [sic] vp
AUG. 2	636	a motion to Substitute pleadings by pltf. jl

DATE	NR	PROCEEDINGS
6	637	REPLY Memo. in support of Attys Fees, Expenses and Costs under the Equal Access to Justice Act. by plft jl
15	–	RECORD ret'd consisting of 64 vols and exh 6 boxes * 8 of 10 boxes rec'd 8-15-85) ak jl
21	–	RECORD ret'd consisting on box 1 of 10 on 8-21-85 jl
**16	–	RECORD ret'd consisting ofn [sic] box 10 of 10 on 8-16-85 jl
AUG. 30	638	RELIANCE on Suppl. auth. by pltf. jl
SEPT 13	639	SECOND Notice of reliance on suppl. auth by pltf jl
24	640	EMERGENCY verified mot for Civil Contempt & issuance of temporary restraining order to permit Haitian refugee center Inc. representatives to enter the Krome Detention Facility, by Pltfs. c
	641	ORDER (EPS 9-24-85) Defts are to provide the following info. 1) Whether any class members are presently beging detained. 2) Names of any class members. 3) Brief statement as to why each has been denied parole. EOD (9-27-85) CCAP. jl
25	642	ORDER (EPS-9/24/85) DENYING Emergency Verified M/ for Civil contempt & issuance of T/R/O to permit Haitian Refugee Center Inc's representatives to enter the Krome detention facility, (EPS-9/24/85-CCAP) dl

DATE	NR	PROCEEDINGS
OCT 3	643	MOTION Concerning order on remand and order denying emergency verified mot. for civil contempt and memo. by plft jl
15	644	RESPONSE to order on remand, by U.S.A. nh
NOV 12	645	EMERGENCY Mot. for Contempt and to enjoin exclusion hearing set for Class members by plft jl
14	646	AFFIDAVIT of Rudolph Aragon (Re: ext. of time.) nh
*OCT 17	647	MOTOIN [sic] For Class Decertification by defts jl
17	648	MEMO in support by defts jl
DEC 6	649	ORDER (EPS 12-6-85) Hearing to determine total number of hrs and reasonable hourly rate for attys. Consideratoin [sic] as to whether fees should be enhanced for any reason. Payment of this award is delayed. EOD (12-10-85) CCAP. jl
9	650	ORDER (EPS-12-9-85) Ptys submit memo. within 10 days form [sic] date of this order. EOD (12-13-8) CCAP. jl
16	651	ORDER: Cause is set for Cal. call on 1-30-86 at 9:00 A.M. Non Jury-trial will be commc. on 2-3-86 at 9:A.M. jl
19	652	MOTION For one wk enlargement of time to file Memo. by plft jl
	653	MEMO. in response to the Court's 12-9-85 Order by deft jl

DATE	NR	PROCEEDINGS
19	654	NOTICE of amendment to plft's mot. for one wk enlargement of time to file memo. by plft jl
	655	MOTION For one wk enlargement of time to file memo. bly plft jl
	656	ORDER (EPS 12-19-85) Granting mot. for ext of time up to 12-26-85. EOD (12-27-85) CCAP. jl
26	657	MEMO. on the cont. Viability of injunctions Contained in Final Judgment by plft jl
1986		
JAN 7	658	NOTICE Of hearing on oral agrument concerning cont. of injunction sch for 1-27-86 at 9 A.M. (EPS 1-7-86) jl
24	659	MOTION to correct the addition to costs & expenses, by pltfs. cf
24	660	THIRD submission of bills for costs & expenses for period July 25 [sic] 1986 thru January 24, 1986, by Ira J. Kurzban, Esq. cf
FEB 3	661	MOTION For Reconsideration by deft jl
5	662	RESPONSE to defts Mot. for reconsideration by plft jl
12	663	ORDER ON MANDATE (EPS 2-12-86) that Final Judgment is modified only insofar as Supreme Court decision requires. In all other respects the various provisions of the Final Judgment's injunctive relief remains in effect. (EOD 2/18/86-CCAP-M).

DATE	NR	PROCEEDINGS
FEB 13	664	ORDER (EPS 2-13-86) Denying mot. to reconsider deft mot. of Court order of 12-6-85. EOD (2-19-86) CCAP. jl
19	665	EMERGENCY Verified mot. for Civil comtempt [sic] ans [sic] issuance of a temp restraining order enjoining deft from Mass Sch. of Class Members Hearing. by pltf jl
19	666	ORDER (EPS 2-19-86) Granting mot. to correct add of Costs and expenses. EOD (2-22-86) CCAP. jl
20	667	ORDER (EPS 2-20-86) Denying Emergency mot. for a Civil Contempt and issuance of a temp. restraining order. EOD (2-22-86) CCAP. jl
21	668	SUPPL. to plfts' 2-19-86 emergency verified mot. for Civil Contemtp and issuance of a T.R.O. by plft jl
24	669	MOTION To reconsider order denying emergency mot. for Civil Contempt and issuance of a temp restraining order by pltf jl
24	670	MOTION to Amend Judgment by deft jl
	671	MEMO. in support of Mot. to Amend Judgment jl
25	672	ORDER (EPS 2-25-86) Denying as mmot pltfs emergencye [sic] mot. to reconsider. EOD (3-17-86) CCAP. jl
*24	673	MOTION To Amend Judgment by defts jl
	674	MEMO in support of Mot. to Amende [sic] Judgment jl

DATE	NR	PROCEEDINGS
MAR 7	675	MEMO. of points and auth. in support of reimbursemtn [sic] of travel subsistence, telephone and psotage [sic] charges. by plft jl
	676	CERT. of Ser. jl
28	677	MOTION for ext. of time for filing proposed findings. nh
APR 3	678	ORDER (EPS 4/3/86) granting Motion for exten. of time. ls
MAY 12	679	PROPOSED findings of fact by pltfs ls
30	680	POST-HRG proposed fin;dings [sic] of fact by pltf. ls
JUNE 30	681	SUBMISSION of add. auth by pltf ls
AUG 29	682	MEMO OPINION (EPS 8/29/86) on fees, costs & expen. (see file for amts) ls
SEPT 8	683	SUBMISSION of attys fees aff by pltf ls
8	684	MOTION to amplify Ct. order for entry of judgmt on atty fees by pltf ls
8	685	AFFIDAVIT of Sandra Lipsman ls
10	686	ORDER (EPS-9/10/86) vacating order of 8/29/86 until it examines circums & determines what measures to take to correct sit. (EOD 9/11/86-ccap) ls
OCT 1	687	CORRECTED memo opin (EPS 10/1/86) & order on atty fees, costs, expen. (EOD 10/7/86-ccap)
23	688	*NOTICE OF APPEAL* by defts. from Corrected Memo Opinion & Order on attys fees, costs, & expenses entered 10/1/86, which replaced Court's

DATE	NR	PROCEEDINGS
		8/29/86 order (vacated by order of 9/10/86). (Copies to USCA, attys of record, Ct. Reporter Coord.) (FEE NOT PAID). cs
Nov. 12	–	USCA receipt for NOA-Case No. 86-5887. nh
1987		
Jan 8	–	*RECORD ON APPEAL* transm. to USCA, consisting of 3 vols. pldgs., 2 vols. transc., & 1 accordian folder of exhs. (pldgs.). (USCA #86-5887). cs
Jan.	–	ACK recpt of ROA on 1/15/87 (USCA 86-5887). caf
Apr. 21	689	ORDER (ES 4/20/87) to show cause why rptg provisions of Final Judgment should not be revoked (EOD 4/28/87 CCAP). caf
May 6	690	MEMORANDUM in resp to crt's 4/20/87, Order to show cause, by deft. caf
7	691	ORDER (EPS 5/6/87) Vacating rpt provisions of final judgment relasing [sic] Barry University from further responsibility in matter (EOD 5/12/87 CCAP). caf
June 19	692	ORDER of USCA Denying writ of mandamus, petr M/consolidate appeal is Denied (6/15/87 87-5438 86-5887) (EOD 6/23/87 CCAP-M). caf
July 6	693	*NOTICE OF APPEAL* from the Order entered on 5/7/87 by Alan Nelson. (COPIES to USCA., US. Atty., Di-

DATE	NR	PROCEEDINGS
		rector of Immigration, Michael P. Linderman, Attys Rcrd. Crt. Rep. Coord.) NO FEE REQR'D (EOD 7/7/87-CCAP) dl
31	694	MOTION to req appellant to provide entire transcript to the crt of appeals purs rule 10(b)(3) of the FRAP, by pltfs. caf
Aug. 18	695	TRANSCRIPT of hrg on 1/27/86 pge 1-82. caf
26	696	OPPOSITION to mot to require appellant provide the entire transcript to the court of appeals pursuant to rule 10(b)(3) of the Federal Rules of appellate procedure, by defts-appellants. caf
26	697	SUR REPLY to appellees' reply to appelants's [sic] opp to provide the entire transcript of proceedings, by defts-appellants.
26	698	DESGNATION [sic] of transcripts pursuant to court order of 8/21/87.
*24	699	ORDER (EPS 8/21/87) MOTION is hereby DENIED w/o prej to appellee's complaince [sic] with Rule 10(b)(3) by serving on the appellant a designation of additional parts to be included, & reserving to the appellee, if necessary, the right to reapply to the Court. (EOD 8/29/87-CCAP). caf
Sept. 1	700	OBJECTION to pltfs-appellee' Designation of transcripts purs/crt order

DATE	NR	PROCEEDINGS
		of 8/21/87, by defts-appellants. caf
*28	701	REPLY to appellants' opp/provide the entire transcript of proceedings, by appellees'. caf
24	–	*RECORD ON APPEAL* transm to USCA consisting in 4 vols pldgs. 3 vol transcp 2 Accord Folder 1 of Exhbs. 1 th 5 & 1 containing DE #512 (86-5887 and 87-5582) caf
Oct. 1	702	ORDER (EPS 9/30/87) directing deft/appellant to provide transcripts (EOD 10/14/87 CCAP). caf
2	703	ORDER (EBD 10/2/87) that lines 8 & 9 of crt's order directing deft/appeallant [sic] corrected to read appellant/pltfs & appeallant [sic] /pltf shal comply w/order immediately (EOD 10/14/87 CCAP). caf
23	–	USCA ack receipt of Certified ROA consisting of 4 vols pldgs, 3 vols transcripts & 2 accordian folders w/exhibits & De#513, (86-5887 – 87-5582). caf
1988		
JAN 20	704	TRANSCRIPT of hrg on 2/16/83. (pgs. 1-96). hy
20	705	TRANSCRIPT of hrg on 2/17/83. (pgs 97-328). hy
Mar. 11	–	*FIRST SUPP. RECORD ON APPEAL* transm. to USCA, consisting of 2 vols. transc. #704 & #705. (USCA-# 86-5887 & 87-5582) nj

DATE	NR	PROCEEDINGS
MAR 29	–	RETURN from USCA ack recpt of CERT. ROA. (2 Vols transcripts) (1st Supp ROA #704 & 705 TRANSC.) (USCA # 87-5582). hv
JUL 28	706	TRANSCRIPT of Hrg on 1/27/86 pgs 1-82. lis
28	707	TRANSCRIPT of Hrg on 2/6/86 Vol 1 pgs 1-188. lis
28	708	HEARING proceedings on 2/24/86 Vol 2 pgs 1-195. lis
28	709	TRANSCRIPT of hrg on 2/26/86 Vol 4 pgs 1-42. lis
28	710	TRANSCRIPT of hrg on 3/7/86 Vol 5 pgs 1-143. lis
25	711	MANDATE OF USCA-Reversing Judgment of District Court & Remanding cause to District Court in accordance w/Opinion of USCA. (USCA 10/11/88) (USCA 87-5582) (EOD 10/31/88-M-CCAP). 8 vols of ROA & 1 accd. folder ret'd from USCA. lis
1989		
FEB 2	712	MANDATE OF USCA-Affirming in part & Vacating & Remanding cause to District Court for recalculation of atty's fees & expenses in accordance w/Opinion of USCA. (USCA 1/25/89) (USCA 86-5887) (EOD 2/2/89-M-CCAP) w/Opinion. 5 vols of records & 1 env of exh ret'd from USCA. lis

DATE	NR	PROCEEDINGS
*JAN 31	713	ORDER (EPS 1/30/89) on MANDATE: Any remaining inj relief entered in favor of pltfs in this matter is hereby VACATED. (EOD 2/3/89-CCAP). lis
FEB 1	714	ORDER (EPS 2/1/89) SETTING status conf on 2/28/89 @ 8:30 a.m. & ptys file a joint status rpt no later than 2/15/89. (EOD 2/3/89-CCAP). lis
9	715	ORDER (EPS 2/9/89) VACATING Court's Order dated 2/1/89. Status rpt & status conf will be resch when mod mandate is ret'd from USCA (EOD 2/13/89-CCAP). lis
*7	–	Letter from USCA in re; Mandate iss. on Jan. 25, 1989 to be returned to USCA w/judgment ASAP. njf
MAY 22	716	REQUEST for hrg on remand, by Pltfs. agd
JUNE 1	717	ORDER (EPS 5/31/89) SETTING status conf for 7/7/89; ptys file jt statu rpt no later than 6/26/89 (EOD 6/6/89-CCAP). fr
SEPT 19	–	*RE-TRANSMITTED ROA* to USCA. (7 vol pldgs, 6 vol transc & 2 acc folders of exh) (#86-5887). mc
DEC 15	–	ACK receipt of re-Transmitted ROA to USCA (7 vols pldgs, 6 vols trnasc & 2 vols of accordian (exhs) USCA #86-5887. agd

DATE	NR	PROCEEDINGS
26	–	RETURNED ROA consisting of 9 vols & 2 Envelopes of exhs. USCA #87-5582. agd

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 86-5887

MARIE LUCIE JEAN, ET AL., PLAINTIFFS-APPELLEES

v.

ALAN C. NELSON, ET AL., DEFENDANTS-APPELLANTS

DOCKET ENTRIES

DATE	PROCEEDINGS
7/10/87	Each box contains one copy of the appellee * * * and 10 volumes of appendix to the brief. ih
7/29/87	Received for screening. (lt)
8/25/87	According to MJC, since Spellman is out of same district as Arnovitz (who will be sitting on panel #8 for Mon. & Tues, 9/28 & 29/87) this case must be set before Judge Carr (who will be sitting on Wed. & Thurs. 9/30 & 10/1/87) BJJ
9/21/87	JLE recused. Per JCH, remove from calendar since it is week before and TAC is sitting on other panel in Atlanta for week. bjj
9/21/87	Advised cnsl. bjj
2/27/88	Per Irene Hendrix, change style to reflect the new director Alan C. Nelson. NH

DATE	PROCEEDINGS
2/17/89	Per Mike Singer, appellant does not object to motion to file bill of costs out of time. dfb.
12/18/89	ROA—sent to Supreme Court. Vol. 5 req. from District Court. bfw
1/18/90	Vol. 5 sent to Supreme Court. bfw
9/14/89	Flg. Appellants' Motion for Additional Stay of Mandate Pending Certiorari. bfw
9/15/89	Flg. Supplement to Appellants' Motion for Additional Stay of Mandate. bfw
9/15/89	Flg. Appellee's Opposition to Motion for Additional Stay of Mandate. bfw
9/21/89	Flg. Order: Motion for further stay is GRANTED until 10/14/89. (TAC) bfw

TITLE Jean -v- Weissner, et al

No. 86-[illegible]

87

1. RECORD, EXHIBITS AND BRIEF INFORMATION

Filed		Due
11/12/86	Appeal Information Sheet	
	Court Reporter Acknowledgment	
	Transcript	on file
	Record on Appeal	
	Partial Record or Cert. List	
1/15/87 ✓	Record on Appeal — No. of Vols. 5 (I)	
	Supp. Record — No. of Vols.	
	Second Supp. Record — No. of Vols.	
1/15/87 ✓	Exhibits 1 ☒ Env ☐ Box ☐ Pkg. ☐ Roll	
	Exhibits ☐ Env ☐ Box ☐ Pkg. ☐ Roll	
	Briefing Notice Issd.	3/26/87
5/6/87 ✓	Brief for Appellant 5/5D	5/5/87
	Brief for Appellant	
5/6/87 ✓	Record Excerpts	
	Brief for Appellee	(S4b 7/87
*7/6/87 ✓	Brief for Appellee 7/5D	7/6/87
	Brief for Cr. Appellee	
7/24/87 ✓	Reply Brief for Appellant 7/22D	7/22/87
	Supp. Brief for Appellant	
	Supp. Brief for Appellee	
	Brief for Amicus	
	Intervenor	
10/26/87	Supp. Authority (Aple) CE	
11/20/87	Supp. Authority (Apnt) CE	
*7/10/87 ✓	10 Vol. Appendix (See SN)	
7/1/88	Supp. Auth. (Apnt) CE	
7/27/88	Supp. Auth. (Aple) CE	
9/14/88	Supp. Auth. (Apnt) CE	

2. AGENCY REVIEW CASES

- Petition for Review of Order ( ) of
  ☐ NLRB ☐ FPC ☐ _____
- Application for Enforcement — NLRB
- Answer to Application for Enforcement
- Cross Application for Enforcement
- Summary Entry of Judgment
- Appl. for Entry of Supp. Judgment

3. MISCELLANEOUS FILINGS

- Sup. Notice of Appeal and D.C. Docket Entries
- Papers Trans. from Misc. No. _____
- Order of DC Granting Appeal IFP
- Order of DC Appointing Counsel
- Affidavit of Financial Status
- CJA 20 Issd./Voucher Recd. _____
- CJA 21 for Transcript

3/25/87 Prob. juris. noted

4. EXTENSION Flg. Motion for:

		Order Fld.	Est. to:
	Appeal Information Sheet		
	Record, Trans.		
	Record Trans.		
	Appellant's Brief		
	Appellant's Brief		
	Appellant's Brief		
6/2/87	Appellee's Brief		21 days from rule
	Appellee's Brief		mot. to dis. JL
	Appellee's Brief		
	Reply Brief		

5. CALENDAR INFORMATION

Non Argument Panel: _____

9/9/87 Case Assigned for 9/30/87 ☐

☒ Atl ☐ Mont ☐ Jax ☐ Mia ☐ _____

9/21/87 Case Cont'd for Reassignment

10/9/87 Case Reassigned for 11/7/87 ☐

☐ Atl ☐ Mont ☐ Jax ☒ Mia ☐ _____

Hearing Panel: PAK/TAC/ESCHBACH

11/7/87 Case Argued ☒ by Appellant ☒ by Appellee

_____ Case Sub. w/o Arg. ☐ by Appellant ☐ by Appellee

Writing Judge: _____

6. OPINION INFORMATION XXX Pub _____ NonPub

12/27/88* Opinion Rendered

Affirmed: TAC AFFIRMED in pt.

Reversed: VACATED and REMANDED

Aff'g in Pt. _____ P.C. _____ Conc. Spec.

Vacated: XXX Signed _____ Dis.

Dismissed _____ Rule 25 PAK Dis. in Pt. &

Opinion Withdrawn: conc. in p

_____ Mand. Remand

*Issued in manuscript form. Slip p.

7. REHEARING INFORMATION

1/10/89 Mot. for Ext. -Ext. to 2/13/89 SF

_____ Mot. for Ext. -Ext. to

_____ Mot. for Ext. -Ext. to

2/13/89 Petition for Rehearing ACN

☒ Appellant ☐ Appellee ☐ Reg. ☐ E. Banc

_____ Petition for Rehearing

☐ Appellant ☐ Appellee ☐ Reg. ☐ E. Banc

_____ Response of

5/17/89 ✓ Order Denying Rehearing

_____ Dissenting

☐ Opinion §9

☐ Order on Petition for Rehearing §9

NO 86-5887

8. MOTIONS

Filing Motion to or for		Response Filed By	Date	Granted	Denied	By Court	By Clerk	Date
	Mandamus							
	Reinstate Appeal							
	Stay Further Proceedings in CA							
	Stay Pending Appeal							
	Injunction Pending Appeal							
	Consolidate Appeals W. No							
	Leave to Appeal IFP							
	Bail Pending Appeal							
	Withdraw as Counsel							
	Appointment of Counsel							
	Leave to File Supp. Record							
	Leave to File Brief in Excess Pgs							
	Dismiss by Appellant							
6/1/87	Dismiss by Appellee w/memo	appellants	6/10/87		XXX	PTF-RLA-JL		6/15/87
2/26/88	Amicus Curiae	APPELLEES	3/3/88		XX	TAC		3/11/88
	Leave to File Supp. Brief							
5-24-89	Stay of Mandate	appellants	5/25/89	XXX		TAC		6/01/89
	Recall Mandate							
	Expedite Appeal							
	Remand							
	Limited Remand							

9. OTHER DOCKET ENTRIES

6/4/87	Flg. appellants' motion for 15 days ext. to file response to motion to dismiss ih
6/5/87	Flg. Order DENYING 15 day extension. Response shall be in this office no later than 6/10/87 before the close of business. RLA
3/30/88	Flg. Supp. Authority by Appt. (CE'd)
7-5-88	Flg. Supp. Authority By Appellee (CE'D)
7/7/88	Flg. response to Supp. Auth. of appt. (CE'D)
1-13-89	Flg. appellees' motion for leave to file bill of costs out of time.dfb (GRANTED by dfb on 1/17/89).dfb.
1/20/89	Flg. Order: The order granting appellees' motion to file bill of cost out of time is VACATED and the Clerk should note on its records that each party bear its own costs. TAC
5/31/89	Flg. Appellees' Response to Appellant's Opposition to a Stay of the Mandate. bfw
6/16/89	Flg. Motion to Further Stay Mandate. bfw (GRANTED 6/23/89 TAC) bfw
7/21/89	Flg. Motion for Additional Stay of Mandate. bfw (GRANTED 7/25/89 TAC)bf
8/14/89	Flg. Motion for Additional Stay of Mandate. bfw (GRANTED 8/15/89 TAC)bf

10. JUDGMENT OR MANDATE INFORMATION

-17-89	Bill of Costs (MOOT See s9f
	Obj. to Bill of Costs
2/27/88	Rlg & Entg Judgment
	Issg Copy of Jdgt to Bd & Cnsl
	Jdgt as Mdt Issd to Clerk
	Jdgt as Mdt Reissd to Clerk
	Dismissal Issd to Clerk 1 envelope
1/25/89	Record on Appeal Retd to Clerk 5 volumes
	Exhibits Retd to Clerk
	Mandate Stayed to
/1/89	Mandate Recalled due to Clerical Error. bfw

11. SUPREME COURT INFORMATION No 89-601

	Preparing Proceedings on Certiorari
	Preparing Supp. Proceedings on Cert
	Transmitting Orig. Exhibits to S.C.
8/14/89	Order of S.C. – Ext. to 9/14/89
10/26/89	Notice of Rlg of Cert. Pet. on 10/13/89
1/24/90	Order of S.C. ☐ Denied ☒ Granted 1/22/90
	Notice of Denial of Pet. for Rehearing
	Opinion of S.C. dated
	Judgment of S.C.
9/18/89	Order of S.C. Ext. to 10/14/89

Page 4 of 4 pages

Haitian Policy

20 MAR 1981

Kenneth W. Starr
Counselor to the
Attorney General

David Crosland
Acting Commissioner

I PURPOSE

Because of the increasing influx of Haitian undocumented aliens arriving in the south Florida area it is necessary to identify secure detention sites to accommodate as many as 4,500 undocumented Haitians and to provide sufficient funds, personnel and equipment to manage these detention centers and provide the necessary deportation and exclusion hearings and other support functions necessary to effect the prompt expulsion to Haiti of these aliens.

II PRESUMPTIONS

- That the flow of undocumented Haitians will continue at a monthly rate of 1,500 persons.
- That all Haitian arrivals and those encountered by INS in south Florida will be placed in detention pending their expulsion from the United States.
- That aliens will immediately be served with notice to appear for exclusion hearings before they can make asylum applications to the District Director, thus cutting off that option.
- That Department of State will detail a sufficient number of asylum officers to the detention center to work directly with INS in order to cut advisory opinion processing time to 24 hours or less (critical).

- That Immigration and Naturalization Service (INS) will be provided with adequate staffing to run hearings.
- That the appeal rate to the Board of Immigration Appeals (BIA) will be approximately 40%.
- That no injunctions or other court orders will hold up or modify processing.
- That it will require approximately one–three months to complete the administrative process and expel the aliens, assuming that sufficient funds and resources are made available.
- That sufficient detention space and resources are made available to detain up to 4,500 aliens pending their removal from the United States.
- That the funds requested are for a six month period.

III. *Procedures*

A. *Arrival/Entry of Haitian Undocumented Aliens*

Haitian undocumented aliens encountered by INS are processed by INS for both exclusion and deportation hearings. Upon arrival, they are subject to the exclusion process, while those who succeed in entering the United States surreptitiously but who are subsequently apprehended by INS, are placed under the deportation process.

B. *Asylum Request*

Asylum requests may be made to an INS district director by those Haitians for whom deportation or exclusion proceedings have not commenced. Haitians who make requests for asylum in exclusion or deportation proceedings will make such

requests directly to the immigration judge. When the asylum request is made the hearing will be adjourned for the purpose of requesting an advisory opinion from the Bureau of Human Rights and Humanitarian Affairs (BHRHA) of the Department of State. The judge will not request such opinion if an opinion has been received in connection with a previous application made to a district director, unless the immigration judge finds in his discretion, that the circumstances have changed so substantially since the prior opinion was provided that a second referral would materially aid in adjudication of the asylum request.

C. *Expulsion*

Haitians, upon arrival, will be detained at INS detention centers to await exclusion proceedings. If ordered excluded and no request for an advisory opinion or other administrative or court stay is pending, appropriate travel documents will be obtained from the Haitian authorities, as necessary, to facilitate their deportation to Haiti.

D. *Administrative Proceeding*

1. *Time Frame*

In most cases, the administrative process will be completed in 5 to 12 weeks. Based on the Cuban hearing experience, the time frames for the specific processes should be as follows:

- Opportunity to obtain attorney (1 week).
- Continuance to prepare asylum request, whether represented or unrepresented (1 week).

- Hearing on merits (1 hour, based on Cuban experience).
- If administrative appeal is waived, the alien is ready for removal. No need for transcription of record.
- If appealed to Board of Immigration Appeals, record must be transcribed (1 week).
- Forwarding of record to BIA, receipt, and assignment to staff attorney (1 week).
- BIA decision (1 to 6 weeks, depending on whether oral argument is requested).
- Return of files from BIA and making of travel arrangements for return (1-2 weeks).
- Total time elapsed for cases where administrative appeal taken approximately 6 weeks to 12 weeks.
- If judicial review by habeas corpus is sought in U.S. District Court, time is impossible to predict (anywhere from one month to one year).
- Court of Appeals review may take even longer.

IV. *Resources*

A. *Facilities*

Illegal Haitian aliens will continue to arrive in the Florida area at the monthly rate of 1,500 persons. Allowing for 1-3 months of processing time, sufficient detention will be required to house up to 4,500 Haitians.

The Krome Avenue North Service Processing Center (SPC) when renovation and expansion is

completed, and with sufficient staff, will house up to 1,000 aliens. The Krome Avenue South site, which was used during the Cuban program, will accommodate up to 500 aliens in permanent and temporary (tent) quarters. In addition, local Florida non-INS detention facilities can provide space for up to 240 aliens. These three options provide INS with a detention capability of 1,740 spaces in the Florida area. An additional 2,000 to 3,000 aliens can be detained at Ellington Air Force Base, Houston, Texas. This site was selected by the Cuban/Haitian Task Force as the most suitable site to house additional Cuban arrivals. It can house up to 2,000 in permanent buildings. The additional 1,000 spaces required can be accomplished by erecting temporary quarters. Photographs of the site are attached.

Medical and social services for those three sites will be provided by Health and Human Services (HHS).

The resources required to operate the above facilities is discussed below.

B. *Manpower*

To enable the Service to receive, detain, and process the aliens at the above facilities, a substantial increase in manpower is required. Needed additional detention manpower at the facilities is as follows:

SITE	*REQUIRED POSITIONS*	*CAPACITY*
Krome North SPC	105	1,000
Krome South	50	500
Ellington	295	3,000

Furthermore, to provide the necessary exclusion hearings in a timely manner, additional Immigration Judges, Trial Attorneys and support personnel are required. Assuming each Immigration Judge should be able to handle 8-10 hearings per day, the following positions above the current staffing are needed.

7	Immigration Judges
7	Trial Attorney
7	Transcribers
7	Interpreters
7	Docket Clerks
4	Clerk Typists
39	

Immigration Inspectors and Adjudicators will be necessary at each detention site to prepare the necessary documentation to initiate exclusion proceedings. The following positions above the current staffing are required.

3	Inspectors
3	Examiners
9	Interpreters
5	Clerks
20	

C. *Equipment*

Additional vehicle equipment purchases are necessary at each facility. These vehicles will be used to transport Haitians from point of apprehension to the facilities, and also from the facilities to the point of departure. The required vehicles at each facility are as follows:

LOCATION	*BUSES*	*VANS*
Krome North	2	2
Krome South	1	2
Ellington	4	2
TOTAL	7	6

D. *Funds*

The following is a summary of the necessary resources needed for this operation. As previously stated, all cost estimates are for a six month period. The dollars shown are in thousands.

	Sub-Total	*Total*
1. *Krome North*		
Positions (105)	$1,187	
Equipment	320	
Supplies	101	
Operational	1,487	$3,165
2. *Krome South*		
Positions (50)	565	
Equipment	170	
Supplies	120	
Operational	734	1,589
3. *Ellington*		
Positions (295)	3,334	
Equipment	620	
Supplies	701	
Operational	4,401	9,056
4. *Legal Staff* (39)		722
5. *Inspection/Adjudication*		274
6. *Non-Service Detention* The use of non-service detention, with a capacity of 240 will require funds in the amount of		1,002

7. *Alien Travel*
   Travel funds required to transport aliens expelled from Texas and Florida are estimated to be 919
   Total Six Month Cost $16,xxx

Bond, Asylum, and Exclusion Processes

I Bond

A. Excludable aliens (aliens at border)

1. Statute (8 U.S.C. 1223, 1225(b)) permits INS to detain any arriving alien who is not "clearly and beyond a doubt entitled to land" for further examination.

2. No specific statutory provision for granting release on bond to excludable aliens.

3. Regulations (8 C.F.R. 212.5(a); 8 C.F.R. 235.3(b)) allow INS district director to parole inadmissible aliens pending hearings under suitable conditions, including giving of a bond.

4. Denial of parole is not administratively appealable.

5. INS takes position that court cannot order INS to parole inadmissible alien. Cf. *U.S. ex rel. Shaughnessy v. Mezei,* 345 U.S. 280 (1953).

B. Deportable aliens (aliens who have entered the United States)

1. Statute (8 U.S.C. 1252(a)) permits INS to arrest and take into custody aliens believed to be deportable. Statute further provides that alien may be detained or released on bond.

2. Regulation (8 C.F.R. 242.2(a)) allows district director to initially determine conditions of custody.

3. Regulation (8 C.F.R. 242.2(b)) permits alien to request that immigration judge redetermine custody conditions originally set by district director.

4. Regulation (8 C.F.R. 242.2(b)) permits custody determination by immigration judge to be appealed to Board of Immigration Appeals.

5. BIA has held that an alien generally should not be detained or required to post bond except on a finding that he is a threat to national security, or a poor bail risk. *Matter of Patei,* 15 I&N Dec. 666 (BIA 1976).

6. Statute (8 U.S.C. 1251(a)) provides that: "Any court of competent jurisdiction shall have authority to review or revise any determination of the Attorney General concerning detention, release on bond, or parole pending final decision of deportability upon a conclusive showing in habeas corpus proceedings that the Attorney General is not proceeding with such reasonable dispatch as may be warranted by the particular facts and circumstances in the case of any alien to determine deportability." Court has employed "showing of clear abuse" standard of review. *Carlson v. Landon,* 342 U.S. 524, 540 (1952).

II. Asylum process

A. Statute (8 U.S.C. 1158(a)) provides that: "The Attorney General shall establish a procedure for an alien physically present in the United States

or at a land border or port of entry, irrespective of such alien's status, to apply for asylum. . . ."

B. Regulation (8 C.F.R. 208.3) provides that application for asylum may be filed with district director prior to commencement of exclusion or deportation hearing, and may also be filed or renewed before an immigration judge during exclusion or deportation proceedings.

C. Regulation (8 C.F.R. 208.7) requires district director to seek advisory opinion from Bureau of Human Rights and Humanitarian Affairs at State Department in all cases coming before him.

D. Regulation (8 C.F.R. 208.10) provides that exclusion or deportation hearing *shall* be adjourned for advisory opinion unless such opinion has already been obtained by the district director in connection with his adjudication. In the latter situation, the judge may request a new opinion if he believes that there has been a substantial change in circumstances.

E. Regulation (8 C.F.R. 208.9) provides that while asylum denial by the district director may not be appealed, the request may be renewed in exclusion or deportation proceedings before immigration judge.

III. Exclusion proceedings

A. Statute (8 U.S.C. 1225(b)) provides that, except for crewmen, national security cases, and stowaways, aliens believed to be inadmissible "shall be detained for further inquiry to be conducted

before a special inquiry officer [immigration judge]."

B. Statute (8 U.S.C. 1362) provides that any alien appearing in exclusion proceedings "shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as he shall choose."

C. Statute (8 U.S.C. 1226(b)) provides that: "From a decision of a special inquiry officer excluding an alien, such alien may take a timely appeal to the Attorney General, and any such alien shall be advised of his right to take such appeal."

D. By regulation, (8 C.F.R. 3.1(b)(1)) the Attorney General has authorized the Board of Immigration Appeals to hear exclusion appeals.

E. Regulation (8 C.F.R. 3.1(c)) provides that oral argument is available as a matter of right in all exclusion appeal cases.

F. Statute (8 U.S.C. 1105a(b)) provides that final orders of exclusion may be reviewed by petition for habeas corpus filed in a U.S. District Court.

IV. Deportation proceedings

A. Statute (8 U.S.C. 1252(b)) provides that, except for certain cases involving crewmen, a special inquiry officer (immigration judge) shall conduct proceedings to determine deportability of aliens in the United States.

B. Statute (8 U.S.C. 1362) provides right to retained counsel in deportation proceedings.

C. No statutory right to administrative appeal of deportation order.

D. Regulation (8 C.F.R. 3.1(b)(2)) authorizes the BIA to hear deportation appeals.

E. Regulations (8 C.F.R. 3.1(d)(1-a)); 8 C.F.R. 3.1(c) provide oral argument before Board as a matter of right on all but clearly frivolous deportation appeals.

F. Statute (8 U.S.C. 1105a(a)) provides that final orders of deportation may be reviewed directly in U.S. Courts of Appeals, and that the filing of a petition for review automatically stays deportation unless the court otherwise directs.

V. Administrative options for simplifying asylum, exclusion, and deportation process.

A. Eliminate jurisdiction of immigration judge and BIA to review custody determinations made by district director in deportation cases.

B. Change regulations to eliminate two-step asylum, exclusion, and deportation process.

1. Make either the district director or the immigration judge the sole decision maker in asylum cases.

2. Making district director the sole decision maker could be expected to re-raise the issues litigated in *Pierre v. United States,* 547 F.2d 1281 (5 Cir. 1977), vacated and remanded, 434 U.S. 962 (1977).

C. Eliminate mandatory requirement for advisory opinions from State Department

1. Could eliminate altogether (might be hard to defend).
2. Could use system of profiles with individual case referrals on a selective basis.

D. Exclusion appeals

1. Give more resources to BIA to devote to expediting appeals in exclusion cases.
2. Eliminate oral argument of right and make it discretionary, to be granted by Board only in those cases where there are significant legal issues to be explored.
3. Designate body other than BIA to hear exclusion appeals. (Unlikely to result in much benefit, since BIA has developed appellate expertise.)

E. Deportation appeals

1. Eliminate administrative appeal and let immigration judge decisions in deportation cases go directly to courts of appeals.
2. Restrict availability of oral argument on appeals from deportation cases.

F. Judicial review of deportation orders

1. Move to vacate automatic stays of deportation in more petition for review cases.
2. Attempt to get courts to impose sanctions on private attorneys who use judicial review process primarily for delay.

G. Administrative Procedures Act considerations

1. Any change in regulations which takes rights or privileges away from aliens will most likely require a 60 day notice and comment period, and a 30 day delayed effective date, *Sannau v. United States,* 460 F. Supp. 458 (S.D. Fla. 1978), unless "good cause" exemption contained in 5 U.S.C. 553(d) can be claimed.

UNITED STATES DISTRICT COURT
SOUTHERN DISTICT OF FLORIDA

Case No. 81-1260-Civ-EPS

LUCIEN LOUIS, ET AL., PLAINTIFFS

v.

ALAN C. NELSON, ET AL., DEFENDANTS

AFFIDAVIT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ROBERT E. JOCEAM, being duly sworn, deposes and says:

1. I am a member of Fried, Frank, Harris, Shriver & Jacobson, a law firm with offices in New York, Washington, D.C. and London, England, and am fully familiar with my firm's participation in this matter. I have been a partner in its litigation department since 1974.

2. From October of 1981, to the present, the firm has acted as special counsel to plaintiffs; throughout this time, its associates have worked under the supervision and guidance of lead counsel in Florida and myself.

3. This afidavit is submitted in support of a request for attorneys fees on behalf of the firm. This application contains no fee request for my services, however, and does not reflect any amount of my time in the hourly totals, although I supervised the associates' efforts closely,

Calculation of Fee Request

7. Both in my firm's immigration practice and in its practice generally, I have had extensive experience supervising teams of associates working on complex matters and under expedited trial and appellate schedules. As a billing partner, I regularly review attorney time submissions, estimate total productive time (including by reducing billable hourly rates, if necessary), and bill fees and disbursements to reflect an appropriate professional fee and statement.

8. The firm of Fried, Frank has an exemplary record of *pro bono publico* service in which I am proud to participate and play a substantial role. In the last two years alone, for example, I supervised my firm's associates in the representation of the City of New York in tort claim defense in over 64 cases, including matters which were appealed to the highest court of New York. In connection with immigration and refugee matters in this time period, my firm acted as counsel for the Lawyers Committee for International Human Rights and the U.S. Helsinki Watch Committee, who appeared *amicus curiae* in *Rodriguez-Fernandez v. Wilkinson*, 654 F.2d 1382 (10th Cir. 1981), a case affecting the unlawful detention of Cuban refugees. In that matter, the 10th Circuit ordered the detained plaintiff released after more than one year's imprisonment, concluding that continued detention by the Goverment was unlawful. I presently serve as the firm's coordinator for acceptance and prosecution of cases in the *pro bono* program of the United States District Court for the Southern District of New York, under which attorneys are assigned to handle matters involving Social Security claimants, employment discrimination and prisoner complaints, among others. Among other matters handled *pro bono* within the New York office during the past year, appropriate to note here, are two major civil rights cases in

the United States Supreme Court, two death penalty appeal and pardon review board cases in the Florida courts, and a substantial contribution of unreimbursed professional time to the Special Prosecutor's investigation concerning Secretary of Labor Raymond Donovan.

9. Where the client for whom the firm is acting has rights under law to recompense of disbursements or to an award of legal fees, it is my firm's practice to seek such recompense and fees. In some matters, it is willing to forego making an application or to waive its rights. In this matter, our submission as originally made reflected a substantial reduction in our out-of-pocket costs and recorded time equivalents, with the objective of avoiding a dispute over the details of our service. While we appreciated the entitlement, we were surprised that they would question the factual basis upon which the reimbursements requests were computed. We regret further the burden to which we, the Court and other counsel need now be put in providing substantial documentation, especially given the Government's failure to seek discovery, but are pleased, in view of the government's insistence, to do so. Moreover, the award of the amount requested, which represents only a portion of the firm's actual involvement in the litigation effort, would enhance the firm's ability to extend our effectiveness on behalf of those who cannot pay for our legal services.

10. Based upon my consideration of associates' productivity and with a view toward the firm's commitment to *pro bono* service, I endeavored to establish an appropriate fee request for our participation in this matter, which I approximated at $82,000. In light of the government's opposition to this very reasonably estimate, I believe the firm's entitlement to a fee award should be measured from the standpoint of all billable time spent. Accordingly, I have attached the documentation of all productive hours

spent by associates, law clerks and paralegals at the firm, from which I had derived the original fee request. These hours reflect participation in the litigation from the point of the defendant's motion to dismiss through the denial of the appellate stay. At our customary billing rates, detailed below with respect to each team member, the firm would receive $131,661.50 for these services.

11. In addition, my firm has applied for an award of $20,336, representing costs advanced in this matter, details of which have been set forth in connection with plaintiffs' original motion papers.

12. I have reviewed firm records concerning time and disbursements and hereby attest to the accuracy of the attached itemizations (Juceam Exhibits A through E).

The Fried, Frank Participants

13. Christopher Keith Hall, Esq., a 1978 graduate of the University of Chicago Law School, was associated with the firm from September 1978 through May 1982. At present, he is employed as an instructor at the University of Miami School of Law, in the fields of legal writing and human rights law. At the times in question in firm's customary billable rate for Mr. Hall was $105 per hour. Thus, for the 483.5 hours for which specific documentation is now submitted, the firm would have billed in excess of $50,000. (Affidavit Exhibit A) But these dollars alone do not reflect the full investment made by the firm in this litigation by virtue of Mr. Hall's work. During the period involved in this motion, there were times when Mr. Hall worked virtually full time, to the exclusion of any billable assignments. The firm, at lead counsel's request, sent Mr. Hall to Miami for a two-week period to assist in trial preparation. Moreover, because of Mr. Hall's seniority within the firm's associates, as well as his breadth of knowledge of the relevant areas of law, I was able to en-

trust to him much of the day-to-day coordination of associate responsibilities, as well as a good deal of the supervision and editorial work. I worked closely with Mr. Hall and am satisfied that his direction of the associates' efforts contributed to overall efficiency of time and quality of product.

14. Two junior associates also worked on various aspects of this litigtion on a virtually full-time basis: Terrence A. Corrigan, Esq., a (January) 1981 graduate of Columbia University School of Law, and Mary B. Gilmore, Esq., a 1981 graduate of the University of Miami School of Law. At Mr. Corrigan's customary billable rate of $90 per hour and Ms. Gilmore's rate of $85 per hour, the firm would have billed in excess of $35,000 for their respective 165.6 and 266.6 documented hours on this matter. (Affidavit Exhibits B and C).

15. Several other attorneys worked on various aspects of the district court proceedings. In alphabetical order these associates include, with seniority and billable rates indicated: Irwin Blum, Esq., Columbia University School of Law (1977) $105 per hour; Robin A. Fleischner, Esq., New York School of Law (1980) $90 per hour; Anne Golden, Esq., Rutgers University School of Law (1978) $105 per hour; Nancy Schnell, Esq., New York School of Law (1979) $100 per hour; Marla G. Simpson, Esq., University of Michigan School of Law (1978) $105 per hour; Jeffrey Susskind, Esq., University of Michigan School of Law (1979) $100 per hour; Debra M. Torres, Esq., Yale University School of Law (1981) $85 per hour; Merrie F. Witkin, Esq., Harvard University School of Law (1979) $100 per hour. At the applicable billing rates for these individuals, the firm would have billed in excess of $27,000. (Affidavit Exhibit D).

16. Finally, mindful of the importance of limiting costs without impairing quality of representation, the firm

asigned various tasks in this matter to its paralegals, law clerks and summer associates, whose 350-plus hours would have been customarily billed at $40.00-$50.00 per hour. (Affidavit Exhibit E). I believe that this time as well is properly includable in plaintiffs' attorneys fees request.

Conclusion

17. In deriving the firm's attorneys fees request for the purposes of this motion, I made reference to my own time records (not herein listed) and to the above-described documentation of well-over 1,500 productive hours by associates, paralegals and law clerks. A comparison between the $82,000 request and the actual firm recorded time detailed above reveals a $50,000 discount from the firm's ordinary rates and a discount of $40,000 from the $90 rate ceiling I arbitrarily employed in the request.

18. Should this Court determine that the firm's submission on this motion is premature insofar as it does include attorneys fees for the stay proceeding in the 11th Circuit (although it does not include the appeal on the merits), the $82,000 request is still lower than the amount calculable for the district court proceedings using *either* the firm's customary rates (approximately $96,000) or the arbitrary $90 rate ceiling (approximately $89,000).

19. Despite several extensions of time in which to do so, the Government has declined to seek discovery of time and disbursement records. Thus, for the Court's convenience we have supplied the attached exhibits and calculations.

20. For all of the above stated reasons, I believe that the number of hours listed were all reasonably, necessarily and justifiably incurred. Accordingly, attorneys fees and costs, in the amounts requested should be awarded pursuant to the Equal Access to Justice Act.

/s/ Robert E. Juceam
ROBERT E. JUCEAN

Sworn to before me this
5th day of November, 1982

/s/ BRAD ERIC SCHELER
Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTICT OF FLORIDA

CASE No. 81-1260-Civ-SPELLMAN

LUCIEN LOUIS, ET AL., PLAINTIFFS

v.

ALAN NELSON, ET AL., DEFENDANTS

MEMORANDUM OPINION AND ORDER ON ATTORNEYS' FEES, COSTS AND EXPENSES

INTRODUCTION

This matter is before the Court for a determination of the amount of attorneys' fees, costs and expenses to be paid by the government to Plaintiffs' counsel under the Equal Access to Justice Act [1] ("EAJA") and related statutes.[2] The Court has ruled, by separate order, that the Plaintiffs' counsel are entitled to such an award.[3] Thus, the only matter hwich must be resolved is the precise amount to be paid to counsel by the government.

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[1] 28 U.S.C. § 2412.

[2] 28 U.S.C. § 1920, 28 U.S.C. § 1961.

[3] *Jean v Nelson*, No. 81-1260 (S.D. Fla. Dec. 6, 1985) (order granting entitlement to attorneys' fees). Portions of said Order are reiterated herein; the Order in its entirety is attached hereto as an Appendix.

I

BACKGROUND

The last two decades have witnessed an influx of refugees into the United States, particularly the South Florida area, that has been perhaps unprecedented in what is considered peacetime.

The government's handling of refugees who arrived from Haiti, the poorest nation in the Western Hemisphere, came under fire in a series of lawsuits filed in the late 1970's and early 1980's. The bulk of these lawsuits were brought by attorneys and human rights activists who sought to protect the civil rights of the Haitian refugees. The litigation that arose from the alleged abuse of those rights was lengthy and bitter.

This case began in response to implementation by the INS of a new policy of accelerated exclusion proceedings and detention without parole of all Haitian refugees.[4] In essence, the litigation had two primary goals. First, the Plaintiffs sought to stop the mass exclusion hearings which were being held without counsel. And second, Plaintiffs sought to obtain the release from detention of class members pending the determination of their political asylum applications, thereby restoring to full force the effect the prior policy of parole pending individual exclusion proceedings.[5]

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[4] The background to this litigation is discussed in *Louis v. Nelson*, 544 F. Supp. 973, 978-981 (S.D. Fla. 1982) and in the Eleventh Circuit's panel opinion, *Jean v. Nelson*, 711 F.2d 1455, 1464-1474 (11th Cir. 1983).

[5] The Complaint, filed on June 16, 1981, asserted seven causes of action. Count I challenged the commencement of preliminary interviews for Haitian refugees without the presence of counsel or notice of the right to counsel; Count II challenged the legality of the new detention policy, which was not promulgated pursuant to the rule-making requirements of the APA; Count II challenged the failure to advise

After a lengthy trial, this Court held that the new detention policy was adopted in violation of the Administrative Procedure Act ("APA") and that the Plaintiffs' continued incarceration pursuant to this policy was unlawful. *Louis v. Nelson*, 544 F. Supp. 973, 993-97 (S.D. Fla. 1982). Ten days later, this Court declared the new detention policy "null and void" as to the defined class, and ordered the release of its members "forthwith" pursuant to a carefully drafted release plan. *Louis v. Nelson*, 544 F. Supp. 1004, 1006-07 (S.D. Fla. 1982). Thus, the Plaintiffs effectively obtained both of the goals they set out to achieve. As a direct result of this litigation, the Deendants stopped the accelerated mass exclusion hearings and class members were released from indefinite incarceration.[6] These results

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class members of their procedural rights at exclusion hearings; Count IV challenged the denial of access to counsel; Count V challenged the denial of public exclusion hearing; Count VI challenged the denial of the right to apply for political asylum; and Count VII challenged the lawfulness of the new Haitian program in its entirety under the equal protection clause. In a Memorandum Opinion and Order dated February 24, 1982, this Court dismissed Counts I, III, V and VI in their entirety and Counts IV and VII in part. It retained jurisdiction over Count II, Count IV insofar as its alleged that Haitians in detention had first amendment rights of access to counsel and that the Haitian Refugee Center had a claim of access to those persons in detention; and Count VII insofar as it alleged that the detention policy was applied in a discriminatory fashion. *Louis v. Meissner*, 532 F. Supp. 811 (S.D. Fla. 1982).

[6] The relief obtained by the Plaintiffs mooted many of the issues raised in the Complaint. Plaintiffs were released from detention and indirectly obtained counsel or notice of the right to counsel, thereby ensuring that class members would have notice of their procedural rights at exclusion hearings (Count III), including the right to apply for political asylum (Count VI). As a result of this lawsuit, defendants stopped their practice of preventing lawyers from contacting Haitians at closed exclusion hearings (Count I). With the release of class members, Plaintiffs have had access to class members (Count IV). Also

were affirmed by the Eleventh Circuit panel. *See Jean v. Nelson*, 711 F.2d 1455, 1510 n.63 (11th Cir. 1983). The *en banc* court dismissed the Defendant's appeal of this Court's decision on the APA issue, thus leaving the results Plaintiffs obtained undisturbed. *See Jean v. Nelson*, 727 F.2d 957, 962 (11th Cir. 1984), *aff'd in part*, 105 S.Ct. 2992 (1985).[7]

The results of this litigation were clearly overwhelming and important. To be sure, the Plaintiffs waited anxiously for the vindication of their rights; the attorneys, who brought this suit *pro bono publico*, have waited to be compensated for their efforts.

The Court has reviewed in detail hundreds of pages of affidavits in which counsel outlined their hours, costs and expenses, and their customary fees. Counsel calculated their fees under several theories, taking into account any reduction which the Court indicated it would make to reflect its finding that the position of the government concerning the equal protection issue was reasonable. In addition to having the affidavits before it for review, the Court

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as a direct result of this litigation, the INS promulgated new parole regulations which are facially neutral and which require parole decisions to be made without regard to race or nationality. *See* 8 CFR § 212.5 (1985).

[7] The Eleventh Circuit panel that originally heard this matter found that the defendants discriminated against the Plaintiff class in the enforcement of the new detention policy and that the Plaintiffs were therefore denied equal protection. *Jean v. Nelson*, 711 F.2d at 1509. The Eleventh Circuit, sitting *en banc*, however, held that excludable aliens have no constitutional rights with respect to their applications for admission, asylum, or parole. *Jean v. Nelson*, 727 F.2d 957 (11th Cir. 1984) (en banc). The Supreme Court held that the *en banc* court should not have eached the constitutional issue because under the statutes and regulations now in effect, parole decision must be made without regard to race or national origin. *Jean v. Nelson*, 105 S.Ct. at 2998.

III

THE STANDARD

In *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983), the Supreme Court advised that "[t]he most useful starting point in determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." The resulting product is called the "lodestar". Obviously, determining how many hours are "reasonably" expended and what constitutes a "reasonable" hourly rate require a thorough analysis of many factors. Most of these factors are identified in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974), and must be applied to cases arising under the EAJA in this Circuit. *Florida Suncoast Villas, Inc. v. United States*, 776 F.2d 974, 975 (11th Cir. 1985). The *Johnson* factors are not exhaustive.

In calculating their hours, "[c]ounsel for the prevailing party should make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in private practice ethically is obligated to exclude such hours from his fee submission." *Hensley*, 461 U.S. at 434.

Once the "lodestar" figure has been ascertained, the Court can then reduce the award if the plaintiff has not prevailed on a claim, even where the "claim were interrelated, nonfrivolous, and raised in good faith." *Id.* at 436. However, rather than try and parse out the losing claims, the Court must examine the results achieved as a whole. *Id.* at 435.

On the other side of the coin, an award can be enhanced in cases of "exceptional success." *Id.* 435.

In the instant case, the Court has already found that the Plaintiffs were the prevailing party for purposes of awarding them attorneys' fees and other expenses under the EAJA. The Court further found that the government's

position on the Administrative Procedures Act ("APA") issue was not substantially justified, but that any award would be adjusted downward to reflect the fact that the government's position was not unreasonable as to the equal protection claim. The Court observed, however, that "there was considerable overlap between theAPA and the equal protection claim." (Appendix, p. 12).

Additionally, the Court noted that "[b]ecause the litigation before the Supreme Court concerned only the equal protection claim the Plaintiffs are not entitled to compensation under the EAJA for their efforts in that Court." (Appendix, p. 14, n.8). The possibility of partially compensating the Plaintiffs for those efforts was not entirely ruled out, since the government's change in position concerning their argument on whether nationality could be a factor in determining whether an alien could be paroled may have unecessarily prolonged the litigation.

Thus, the Court must ascertain what the "lodestar" figures are for the various attorneys claiming awards, adjust that figure downward if necessary, based on the failure of certain claims or for any other reason the Court finds necessary. The Court can then make any upward adjustment to indicate the exceptional results achieved by counsel, or any other factor that would make such an adjustment fair.

IV
THE JOHNSON FACTORS

The Court will begin its analysis by examining the facts of this case under the twelve factors listed in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Ci. 1974). Such an analysis will provide the basis for the "lodestar" figure.[8]

[8] The twelve factors are:
(1) the time and labor required;
(2) the novelty and difficulty of the questions;

A. The time and labor required.

This lawsuit was commenced more than five years ago. The class action suit involved numerous plaintiffs. The record in this case contains over 600 docket entries. Clearly, this was not your garden variety lawsuit.

The time spent by counsel on this lawsuit is listed earlier in this Order. The Court points out that the attorneys have already reduced their hours to reflect the hours spent on the equal protection claim and the time spent at the Supreme Court level. Thus, the hours spent by counsel for which they seek compensation are considerably lower than those listed on page 4 of this Order.[9] The revised schedule of hours, as prepared by counsel, reads as follows:

Attorney	*Total Hours*	*(E.P. Hours)*	*(60% S.Ct.)*	*Reimbursable Hours*
I. Kurzban	2,172.5	(66.4)	(268.17)	1,837.93
I. Stotzky	1,194.85	(15.0)	(276.00)	903.85
B. Winick	1,476.75	(23.0)	(153.48)	1,300.27
V. Weisz	628.2	(0)	(0)	628.2
C. Hall	97.8	(0)	(0)	97.8
M. Rosen	620.0	(0)	(46.2)	573.8
Wald, Harkrader	62.75	(0)	(0)	62.75
Fried, Frank	3,821.0 (Atty)	(363.0)	(674.4)	2,783.6
	1,188.1 (Para)	(0)	(186.06)	1,002.04
TOTALS	11,261.95	(467.4)	(1,604.31)	9,190.24

(3) the skill requisite to perform the legal service properly;
(4) the preclusion of other employment by the attorney due to acceptance of the case;
(5) the customary fee;
(6) whether the fee is fixed or contingent;
(7) time limitations imposed by the client or the circumstances;
(8) the amount involved and the results obtained;
(9) the experience reputation and ability of the attorneys;
(10) the "undesirability" of the case;
(11) the nature and length of the professional relationship with the client; and
(12) awards in similar cases.

[9] This table reflects the figures proposed by Plaintiffs' counsel. As will become apparent, the figures will be revised by the Court.

Several factors added to the volume of hours spent in litigating this case. First, local counsel had to confer with out-of-state counsel on virtually every step taken. The local attorneys, Ira Kurzban, Irwin Stotzky, Bruce Winick, Vera Weisz, Michael Rosen, and for a certain period of time Christopher Keith Hall, had to maintain constant contact with co-counsel in New York, Robert Juceam and his law firm Fried, Frank, Harris, Shriver & Jacobson, and at the initial phases, the Washington law firm of Wald, Harkrader & Ross. naturally, having counsel located in more than one place adds to the number of hours required to prosecute a case, but there is certainly no prohibition against having local and out-of-state counsel work on one lawsuit; it is quite common.

Second, the Plaintiffs faced a formidable foe. The government had, at one time or another, thirty different attorneys working on the case. Naturally, the Plaintiffs had to respond in kind with their own forces.

Third, the government took an unusually unwaivering position throughout the litigation. This is not meant to be critical of the government, but "[t]he government's contentious litigation strategy the plaintiff[s] to respond in kind. The government cannot litigate tenaciously and then be heard to complain about the time necessarily spent by the plaintiff[s] in response." *Copeland v. Marshall*, 641 F.2d 880, (D.C. Cir 1980) (en banc) (footnote omitted).

Fourth and last, as the Court mentioned in its December 6, 1985 Order, the government's change in position regarding the Plaintiffs' claim that the government did in fact have a detention policy that was instituted *ultra vires* of the APA, served simply to prolong the litigation unnecessarily.

In short, having first hand knowledge of the demands of this case, the intensity and length of the pleadings, briefing

and argument and the time schedules involved, the Court is in the perhaps unenviable position of knowing that the time spent by Plaintiffs' counsel in the prosecution of this case has been reasonable and well supported by the record.

B. The novelty and difficulty of the questions.

There can be little serious dispute but that this has been a novel and complex case. Mere volume does not necessarily indicate complexity, but in the instant case, the size of the record and the passage of time do signify what has been the product of extreme complexity and difficulty. The appellate court does not differ with this view. *Jean v. Nelson*, 711 F.2d 1455, 1462 (11th Cir. 1983).

C. The skill requisite to perform the legal services properly and the experience, reputation and ability of the attorneys.

The Court finds that these factors must be considered together, rather than separately as they are listed in *Johnson*. These factors are intertwined, and must be discussed in context. each attorney or firm will be addressed individually so that their particular role in this case will be given fair credit.[10]

Ira J. Kurzban

Ira J. Kurzban's abilities and dedication as an immigration lawyer and champion of the public interest are nationally renowned. he has been identified by the *National Law Journal* as one of this country's twenty leading immigration law experts and has been described as "an extremely capable lawyer of widely recognized legal skill and

[10] Portions of the biographical description of counsel are taken from the Plaintiffs' Proposed Findings of Fact and Conclussions of Law.

dedication to the poor and disadvantaged," *Haitian refugee Center, Inc. v. Smith*, Case No. 79-206-CIV-JLK, slip op. at 13 (S.D. Fla. May 24, 1984).

As counsel for the National Council of Churches of Christ in the United Statse and the National Emergency Civil Liberties Foundation, he has litigated and been counsel of record in every class action lawsuit brought on behalf of Haitian refugees in the Southern District of Florida.

He has received local and national recognition and numerous awards for his work. for example, Mr. Kurzban was the first recipient of the Tobias Simon Pro Bono Service Award. This award is given by the Florida Supreme Court; Mr. Kurzban received the award on April 18, 1982. Also in 1982, Mr. Kurzban was recognized by *American Lawyer Magazine* as being one of the most prominent *pro bono* attorneys in the nation. *Esquire* magazine included Mr. Kurzban in a story on new stars to watch. In a special edition of *Newsweek* magazine entitled "Sweet Land of Liberty," Mr. Kurzban was hailed as one of the "New American Heroes." Perhaps one of the achievements of which Mr. Kurzban should be most proud, centers around his creation of and involvement with a student and alumni run *pro bono* program at the University of California at Berkeley Law School.

In addition to his litigation experience with respect to immigration law and international law, he is a nationally recognized expert in many of the areas of law involved in this case, including political asylum, refugee status, and immigration litigation, and has lectures and published extensively in these areas in respected journals and before sophisticated audiences.

He has taught immigration law, immigration litigation, civil rights, and civil liberties litigation, and has appeared

before Congressional Committes on matters concerning immigration legislation.

In sum, when the words "immigration attorney" are uttered, there is little doubt but that name Ira Kurzban springs to mind.

Fried, Frank

Fried, Frank is a fine law firm with a strong commitment to public interest litigation ad has a very high reputation. Despite local counsel's pleas, Fried, Frank, Harris, Shriver & Jacobson was virtually the only firm in the country possessing the requisite resources and experience in both immigration and federal litigation that was willing to participate in this lawsuit without immediate compensation.

Fried, Frank's reputation was attested to by the government itself at the hearing on the issue of attorneys fees: "We would state that with regard to Mr. Juceam's firm, that we have the highest regard for that firm in the Department of Justice. . . ."

Fried, Frank regularly participates exyensively in *pro bono publico* practice, for causes liberal and conservative, in support of and in opposition to governmental positions and policy, including immigration and refugee matters.

At any given time, Fried, Frank had numerous attorneys working on the instant case. This is not unusual at a large firm. Rather than list the attorneys and their achievements, since only their names were put into evidence, the Court will only take notice that the law firm as a whole enjoys a sterling reputation.

Robert E. Juceam, the partner at Fried, frank who organized and supervised its participation in this case, is an attorney of outstanding ability and reputation, as is reflected in the testimony of his colleagues. The Court

points out that Mr. Juceam is not seeking any compensation for himself at all despite the fact that he spent untold hundred of hours working on this case. Mr. Juceam's selflessness and generosity merit special mention by the Court and set an example for all of us.

Mr. Juceam is held in awesome esteem among immigration practitioners even though immigration law is not his exclusive field of practice.

Mr. Juceam's practice has included, on a regular basis, substantial general federal court and agency litigation, in addition to the representation of aliens in the United States and abroad, and of companies seeking to engage aliens for unemployment in the United States.

A past president of the American Immigration Lawyers Association, Mr. Juceam has also served as the organization's vice president, secretary, liaison committee member to the U.S. Department of State and of the Immigration and Naturalization Service and on its Board of Governors. He has lectured extensively on immigration law and refugee policy, and has testified before Congressional committees and subcommittees concerning proposed immigration legislation.

Bruce J. Winick

Bruce J. Winick is a tenured full professor at the University of Miami School of Law. He has taught Administrative law, Federal Civil Procedure, and Federal Jurisdiction. He is an outstanding scholar and a dedicated teacher.

Professor Winick has been employed as an associate at a large law firm in New York City, by the City of New York in a number of administrative and legal capabilities, and by the American Civil Liberties Union of Florida as its General Counsel.

Professional Winick is a nationally recognized expert on many of the legal issues raised by Plaintiffs' claims. He has published extensively on administrative law matters, and on judicial review of agency action in particular.

Professional Winick has extensive litigation experience in state and federal courts, incliding federal lawsuits involving judicial review of administrative action and also has extensive experience as a consultant to law firms and public litigation groups on the constitutional aspects of administrative law and special procedural issues involved in litigation against the government.

As a result of this experience, Professor Winick is a national expert in the ares of judicial review of agency action, the procedural complexities of litigation against the government, the constitutional subjects of due process and equal protection, and immigration law.

Professor Winick is also an expert in the use of statistics in judicial proceedings and his work in this area was crucial to development of Plaintiffs' discrimination claim.

Irwin P. Stotzky

Irwin P. Stotzky is a tenured full professor at the University of Miami Law School and his reputation is a very high one in this community. Professor Stotzky was instrumental in assisting the great late Soia Mentschikoff, former Dean of the University of Miami School of Law, in elevating the status of the law school to one of the nation's leading institutions.

Professor Stotzky has taught, among other courses, constitutional law, criminal law and constitutional criminal procedure, legal skills and jurisprudence, and immigration law. He has published, lectured and consulted extensively in these areas, and in particular in the area of constitutional aspects of immigration litigation.

Professor Stotzky has been involved in litigation in federal and state courts that raised constitutional questions that played an important part in this lawsuit. He consulted or worked directly on several other Haitian cases, playing an important role in litigation of the constitutional claims in these cases.

As a result of this experience, he is recognized as a national expert on the First Amendment, the constituional subjects of due process and equal protection, international law and immigration law. His expertise was invaluable to the presentation of Plaintiffs' constitutional claims.

Michael J. Rosen

Michael J. Rosen is an outstanding young attorneys who enjoys an excellent reputation in the Southern District of Florida.

Mr. Rosen's practice consists almost exclusively of federal criminal litigation. Prior to joining Rosen & Rosen, a Miami frim, he gained hundreds of hours of trial experience as an attorney with the Federal Public Defender's office in the Southern District of Florida.

Mr. Rosen is a member of the Federal Bar Association and was chairperson of the committee for redrafting the Standing Discovery Order entered in all federal criminal cases in the Southern District of Florida.

As the only attorney ready to assist full-time in preparation and conduct of the lengthy trial of Plaintiffs' claims, Mr. Rosen's expertise in federal trial practice was invaluable.

Vera Weisz

Vera Weisz has extensive experience in representation of Haitian refugees. During the course of her employment at Florida Rural Legal Services, Inc. in Belle Glade, Florida,

and then at the Haitian Refugee Center, Inc., in Miami, Florida, she has been involved in the representation of over one thousend Hiatian refugees seeking asylum in the United States, has represented over five hundred clients at exclusion proceedings, deportation, and asylum proceedings, and has participated in three major federal lawsuits related to the rights of Hiatian refguees. Ms. Weisz has lectured, conducted training seminars, and published on asylum law.

Ms. Weisz was one of the few attorneys in Miami who could speak fluently French and Creole, the languages used by most of the class members. Her experience in processing claims of Haitian refugees and her language abilities were crucial to her work in communicating with and preparing the testimony of Haitian plaintiffs and witnesses.

Christopher K. Hall

Christopher K. Hall has extensive experience in the area of international and immigration law. He has contributed his time to the Lawyers Committee of International Human Rights in connection with refugees and asylum applications and has taught international law, international human rights and international organizations at the University of Miami Law School.

He also has extensive litigation experience. he frequently argues in the Second Circuit and the New York State Court of Appeals and intermediate appellate courts and has worked on three Supreme Court cases.

Mr. Hall also worked as an associate at Kurzban, Kurzban & Weinger, P.A. and at the New York Attorney General's Office.

Wald, Harkrader

Two attorneys from the Washington, D.C. law firm of Wald, harkrader participated in the initial stages of the lawsuit and seek compensation for their services. These two attorneys, Mary Coombs and Mark Stern, also enjoy fine reputations in the legal community.

D. The preclusion of other employment by the attorney due to the acceptance of the case.

Ira Kurzban testified that this case caused him to turn down more lucrative work which would have benefitted his law firm's coffers. The demands of this case also caused a serious crimp in the scholarly work generally undertaken by members of academia, such as Professors Stotzky and Winick.

E. Awards in similar xases.

The Eleventh Circuit recently handed down a decision in which it affirmed the lower court's ward of attorneys' fees in a related case of up to $125.00 per hour. *Haitian Refugee Center, Inc. v. Meese*, No. 84-5679, slip op. (11th Cir. June 24, 1986). In fact, the Eleventh Circuit made no mention whatsoever of any "cap" on awards given under the EAJA.

F. The customery fee.

There is nothing in the record to contradict the figures given by counsel at the hearing and throughout the documentation that state their customary fees. Those attorneys in academia adequately testified as to what their fees are when working on outside projects. The Court, however, that despite five days of hearings, the distinction between members of academia and private attorneys was

never raised. It seems somewhat inequitable that professors, who have no overhead expenses, can charge the same hourly rates as attorneys in private practice. Nonetheless, this distinction has not been addressed by the parties nor in case law, and will therefore not be addressed by this Court other than in passing.

With regard to Michael Rosen, the Court is of the opinion that, when Mr. Rosen's role in this case is compared to that of lead counsel, a reduction in his hourly rate is required. Thus, Mr. Rosen's hourly rate will be adjusted downward to $100.00.

G. Whether the fee is fixed or contingent.

The fees in this case were contingent on three factors: skill, luck and success. Had the Plaintiffs failed to attain the level of success they had, the attorneys involved would have to sustain a loss of several million dollars—not an easy thing for even the most lucrative practitioners. This contingency factor will be discussed later in this Order under the "special factor" analysis.

H. Time limitations imposed by the client or the circumstances.

The time pressures of this case were rather constant. They were imposed, in large part, by the Court, but were also due in part to the exigencies of the situation. The spectre of having human beings languishing in detention centers is not pleasant to anyone, and therefore action had to be taken quickly. The demands of this Court were overwhelming. In sum, the pace was rather hectic throughout the case.

I. The "undesirability" of the case.

There was uncontroverted evidence at the hearing that lead counsel received several letters which contained the

senders' distate with Mr. Kurzban's decision to participate in this case. Mr. Kurzban also lost some clients solely on account of his humanitarian stand in this case. The Court knows from first hand experience that this was not a popular case of the public's eye. The facts involved in this case brought out sincere and intense reactions from the community; some people were sympathetic with the Plaintiffs' plight, others were not shy about their lack of sympathy. Counsel, the Court and the Plaintiffs were exposed to the darker side of humanity on more than one occasion.

J. The nature and length of the professional relationship with the client.

This factor is not relevant to the analysis in this case.

K. The amount involved and the results obtained.

This factor is crucial in this case, and provides the basis for a fully compensatory award. For, as the Supreme Court stated in *Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983): "[t]he result is what matters."

The Court will not attempt to summarize or speculate on what the ramifications of the Plaintiffs' success in this case have been. The Court already determined that the Plaintiffs prevailed on their claims, as a whole, and received the bulk of relief sought.

The government took issue with the record keeping of Plaintiffs' counsel. The Court finds this contentiousness to be mostly without merit. For five years the attorneys kept fairly accurate time sheets, setting forth the time spent and the nature of the work involved. Counsel were extensively cross-examined by the government, and all responded to the satisfaction of the Court that by and large, time sheets reflected contemporaneous record keeping. The Court has in its possession exhibits which include the time sheets

for counsel and finds any inadequacies in record keeping to be inconsequential.

ADDITIONAL FACTORS

A. Duplication

One of the most significant areas of concern expressed by the government involved its contention that counsel's efforts were duplicative and thus not compensable. The Court must disagree. It is not uncommon, nor should is be, that attorneys work in groups. In situations such as these, the court should:

> assess the possibility that reported hours include duplication by reviewing with particular care the number of lawyers present at hearings, depositions and other discovery proceedings, and by evaluating the roles played by the lawyers in the litigation generally. The court can look to how many lawyers the other side utilized in similar situations as an indication of the effort required. Because utilizing more than one lawyer may be reasonable in some situations, such as during settlement conferences or during trial, *we decline to require an automatic reduction of reported hours to adjust for multiple representation or potential duplication. Ramos v. Lamm*, 713 F.2d 546, 554 (10th Cir. 1983) (emphasis added).

Counsel has represented to the Court, and the Court can find no reason to cast aspersions on the representation, that counsel went through their time sheets countless times and purged them of any unnecessary duplication. Furthermore, it must be noted that lack of duplication is not the goal of efficient attorneys, *unreasonable* duplication is the goal. Thus, an award will be reduced "only if the attorneys

are *unreasonably* doing the *same* work." Johnson v. University College of University of Alabama in Birmingham, 706 F.2d 1205, 1208 (11th Cir. 1983) (emphasis in the original).

In the instant case, multiple attorneys for the Plaintiffs *and* the government participated at every stage of the litigation. This was not a one or two lawyer operation. each attorney had her or his own specialty or strength. After receiving a pleading, counsel had to review the document, confer with out-of-state counsel, plan their strategy, divvy up the work depending upon the nature of the task, conduct research, gather resources, and then meet as a group. Naturally, there was room for duplication. That fact, does not call for the conclusion that the duplication was unreasonable or that it taints the entire effort.

The Court finds that the work of counsel was not unreasonably duplicative, and that "[a]ll attorneys who contribute their services to a case may be awarded reasonable attorneys' fees." *Dowell v. City of Apopka*, 698 F.2d 1181, 1188 (11th Cir. 1983) (citation omitted).

B. Unsuiccessful claims: Equal Protection and Supreme Court Arguments

As the Court stated in its December 6, 1985 Order, it found it necessary to reduce Plaintiffs' counsel's hours to reflect the fact that the government was substantially justified in the stance it took in response to the equal protection claim. Additionally, since only the equal protection claim was argued at the Supreme Court level, this Court found it inappropriate to grant an award to counsel for its efforts at that level. Throughout the proceedings at the district and appellate court levels, the government argued that nationality could not be a factor in determining whether an alien in paroled. In the Supreme Court,

the government changed its position and argued that the INS' rules and regulations prohibited the INS from making parole decisions based on nationally, but that under the Constitution, the INS was not prohibited from making such decisions. This Court finds that if the government has argued the position it took at the Supreme Court level, the constitutional claims would probably not have needed to the litigated. Thus, some award is in order for counsel's efforts in the Supreme Court.

As for the equal protection claim, counsel has delineated those hours which can be solely attributable to that issue and has excised them from their total hours. Counsel has also excised 60% of the time spent at the Supreme Court level. The Court finds both excisions are low, and thus rules that such time must be further reduced.

The Supreme Court observed in *Hensley*: "[t]here is no precise rule or firmula for making this determination. The district court may attempt to identify specific hours that should be eliminated, or it may simply reduce the award to account for the limited success." *Hensley*, 461 U.S. at 436-37. The Court finds that both options suggested by the Supreme Court are applicable to the case at bar.

Specific hours spent on the equal protection issue have been identified and eliminated from the total. As previously mentioned, the Court finds that counsel's estimate of time spent on the equal protection claims is too low. By the Court's estimate, forty per-cent (40%) of counsel's time was spent on clearly non-equal protection matters. Perhaps sixty per-cent (60%) of counsel's time was spent on interrelated matters; an insignificant portion of that time was spent exclusively on equal protection issues. Of the 60% of the time spent on commingled material, the Court estimates that approximately 25% of that time was

spent on equal protection issues. Thus, a reduction of 15% from the total number of hours is in order.

Those hours spent at the Supreme Court level shall be reduced by 75% rather than 60%. The Court will allow compensation for a fractional number of hours, because to do otherwise is simply not fair. The legal position of the government may have been substantially justified in the present of technical terms; the tactical position of the government, however, cannot claim the same status, and the Plaintiffs' counsel should not be penalized for the government's change in position concerning whether it had a detention policy or not.

In sum, the Court finds that its reduction of the hours spent on the equal protection claims is more appropriate than counsel's estimates. Additionally, the Court, *sua sponte*, reduced counsel's total hours to reflect a 75% reduction in those hours spent at the Supreme Court level.

C. Documentation

The last factor to consider in determining the lodestar figure is whether counsel adequately documented their time and hours so as to merit a fully compensatory award.

The government argues that attorneys are required to keep contemporaneous, almost perfect, records and time sheets or else suffer the consequences. Such a draconian approach is unnecessary and not supported by the case law. Rather, counsel must conscientiously keep records and time sheets which "should identify the general subject matter of his [her] time expenditures." *Hensley*, 461 U.S. at 424. There is no prohibition against reconstructing time sheets where contemporaneous records are not kept. *Ramos v. Lamm*, 713 F.2d 546, 553 n.2 (10th Cir. 1983).

Even where there are discrepancies in time records, no reduction in the award is mandatory. Where an attorney's

affidavit is not specific as to the nature of the work performed, but does provide the court with the general area of the subject matter, the court need not demand greater accuracy. *See Preston v. Heckler*, 596 F. Supp. 1158, 1161 (D. Alaska 1984).

In reviewing the affidavits, and having heard testimony on the matter, the Court finds it unnecessary to reduce, based on the government's allegation that counsel kept inadequate records, the total award or the number of hours for which counsel seeks compensation.

VI

COMPUTATION OF THE LODESTAR

After examining the factors above, the Court finds that the following schedule reflects the number of hours reasonably expended and a reasonable rate for each attorney or law firm:

Attorney	*Hours*	*EP/S.CT*	*Total*	*Rate*	*Lodestar*
Kurzban	2,172.5	335.21(S.Ct) 325.88(E.P.)	1511.41	$125.00	$188,926.25
Stotzky	1,194.85	345.0 (S.Ct) 179.23(E.P.)	670.62	$125.00	$83,827.50
Winick	1,476.75	191.85(S.Ct) 221.51(S.Ct)	1063.39	$125.00	$132,923.75
Weisz	628.2	-0-	628.2	$75.00	$47,115.00
Hall	97.80	-0-	97.80	$100.00	$9,780.00
Rosen	620.00	57.75(S.Ct)	562.25	$100.00	$56,225.00
Ward, Harkrader	62.75	-0-	62.75	$75-85.00	$4,973.00
Fried					
(atty)	3,821.00	843.0 (S.Ct)	2404.9	$50-175.0	$270,551.25
(para)	1,188.10	232.58(S.Ct)	955.52	$40.00	$38,220.80

VII

UPWARD ADJUSTMENT

Once the lodestar figure has been ascertained, the district court may adjust the fee upward if special factors are present. The Act states in pertinent part: "attorneys fees shall not be awarded in excess of $75 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceeding involved, justifies a higher fee." 28 U.S.C. § 2412(d)(1)(C)(2)(A). *See also Hensley*, 461 U.S. at 436. Because the language of the act is suggestive rather than exhaustive, additional "special factors" which require an upward adjustment of a fee award have been recognized by the courts.

These factors include the following: exceptional success on the part of the prevailing party, *Hensley*, 461 U.S. at 435; the risk of loss faced by the plaintiffs, *LaDuke v. Nelson*, 762 F.2d 1318, 1333 (9th Cir. 1985) and a quality of work so high that it resulted in a level of success higher than would be reasonably expected at the rate charged, *Blum v. Stenson*, 465 U.S. 886 (1984).

In the instant case, the Court has already made its findings of fact under the lodestar analysis. Those findings support an upward adjustment under some of the special factors; additional examination supports an upward adjustment for the remaining special factors.

A. Increase in the cost of living

Unlike many cases, the work done has been spread fairly evenly over the past five years, perhaps with the exception of 1986. Because of the inherently sporadic nature of the judicial system, work had to be done in spurts (to prepare for oral argument, briefing schedules, etc.). "By

specifying inflation as a 'special factor', Congress inducated its concern that lawyers receiving fees at different times obtain equivalent value." *Action on Smoking and Health*, 724 F.2d 211, 219. Thus, there is clear instruction from the language of the Act that counsel should have its award reflect an increase in the cost of living which results from a long delay in payment. *Copeland v. Marshall*, 641 F.2d 880, 893 (D.C. Cir. 1980) (en banc) (citation omitted). This language, however, pertains only to those awards which follow the statutory rate of $75 per hour. Here, counsel's reasonably hourly rate has already surpassed the statutory rate, and therefore the Court declines to adjust the hourly rates to take into consideration the ravages of inflation.

B. Limited availability of counsel

There was substantial testimony that the Plaintiffs' counsel encountered a shameful amount of disinterest from the local legal community when counsel sought to gather forces for this lawsuit.[11]

As mentioned earlier, this was a complex case. Counsel had to have knowledge of many interwoven and discrete areas of the law. Additionally, any attorney who did become involved in this case has to do so at her or his own expense, since the possibility of being reimbursed for the work was remote. Finally, the Court heard undisputed testimony that despite counsel's best efforts, they were unable to attract local counsel that had the combination

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[11] As the Eleventh Circuit observed, "[e]fforts had been made by the INS to secure representation for the Haitians, especially *pro bono*, in the Miami area. The response it received is an ugly reflection on the commitment with which the bar meets its responsibility to make legal services available to the disadvantaged." *Haitian Refugee Center, Inc. v. Smith*, 676 F.2d 1023, 1031 n.16 (5th Cir. 1982).

of knowledge, financial capability, and dedication to take on the responsibilities that this case entailed.

Although the limited availability of counsel is one of the factors already considered under *Johnson*, the Court finds it a significant enough factor to require an upward adjustment of the lodestar figure.

C. The risk of loss

This factor, too, is subsumed to a large extent under the *Johnson* factor addressing the contingency of the award. However, "Congress has clearly indicated that the risk of not prevailing, and therefore the risk of not recovering any attorney's fees, is a proper basis on which a district court may award an upward adjustment to *an otherwise compensatory fee*". *Blum v. Stenson*, 465 U.S. 886, 902 (1984) (Brennan, J., concurring) (emphasis added). The Court reads this language to hold that in addition to tailoring an award to be compensatory, the district court may also make an upward adjustment of that fee to reflect the risk of loss faced by counsel. Accordingly, the Court makes an upward adjustment of the lodestar figure to compensate counsel for the risk of loss that loomed very darkly above them.

D. The quality of the work

An upward adjustment is justified "only in the rare case where the fee applicant offers specific evidence to show that the quality of the service rendered was superior to that one reasonably shoul expect in light of the hourly rates charged and that the success was 'exceptional.' " *Blum v. Stenson*, 465 U.S. 886, 899 (1984) (citation omitted).

In the instant case, the Court finds that not only is there record evidence that counsel performed at an unusually high level of skill for attorneys charging the rates they did,

but the Court also points out that additional credit must be given for having taken the case in the first place and *maintaining* the levels of dedication and quality for five years.

It is true that the quality of the work can be reflected in the number of the hours documented. *Id.* at 898. But, to apply this principle in a vacuum or to hold that the quality of the work is reflected solely by the number of billable hours would, in effect, hold the law and its practitioners to standards and rules that are more fitting for economists. it would be unfair to equate that degree of skill held by counsel with the swiftness with which she or he could perform the work. To do so only encourages shoddiness and haste, neither having a place in the legal world. Thus, the Court declines to find that the quality of the work put out by counsel is wholly reflected by the number of billable hours. Rather, the Court finds that based on its first hand knowledge of the quality of Plaintiffs' counsel's work, as evidenced by the record, the lodestar figure must be increased to acknowledge the unsurpassable quality of the work.[12]

E. The results achieved.

The Supreme Court stated in *Hensley*, "[w]here a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee. Normally, this will encompass all hours reasonably expended on the litigation, and indeed in some cases of exceptional success an enhanced award may be justified." 461 U.S. at 435.[13]

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[12] For another court's view of the quality of the work performed by counsel, see *Haitian Refugee Center, Inc. v. Smith*, No. 79-2086 (S.D. Fla. May 24, 1984) (order granting motion for fees, costs and expenses).

[13] In its analysis of the provisions of 28 U.S.C. § 1988, the Supreme Court in *Hensley v. Eckerhart*, 461 U.S. 424, 433 n.7 (1983) noted.

Although the "results achieved" have already been discussed in arriving at the lodestar figure, the Court finds that the case at bar does constitute one of those rare cases where such "exceptionel success" has been achieved, an enhanced award is justified.

The purpose of most civil rights laws is very simple: "a civil rights plaintiff seeks to vindicate important civil and constitutional rights that cannot be valueo solely in monetary terms." *Riverside v. Rivera*, No. 85-224, slip op. at 11 (Sup. Ct. June 27, 1986). Thus, the law recognizes the crucial concept that a person's freedoms are just as vital and mandate as much protection as a person's pocketbook. But, in order to enlist an attorney's aid in ptotecting those rights, a plaintiff must be able to have some leverage – fee shifting statutes provide that leverage by permitting prevailing plaintiff's cousel to receive compensation under certain circumstances.

In the instant case, the Plaintiffs' civil rights have been vindicated – "as a direct result of this litigation, the defendants stopped the accererated mass exclusion hearings and class members were released from indefinite incarceration." (Appendix, p.4).

Additionally, the *pro bono publico* bar in this community and throughout the nation has been shaken to its roots; a more conscientious attitude toward the plight of the indigent and unpopular has been taken in recent years due to the publicity of this case, and the nation-wide efforts to obtain *pro bono* counsel. Surely this "result" is one which cannot be measured in monetary terms, but must be measured nonetheless.

Finally, Plaintiffs' counsel took the government to task here, and succeeded at prohibiting the government from pursuing a course of action contrary to our laws and the forces of human dignity. This litigation reinforced the concept that parole decisions must be made without regard

to race or national origin. *Jean v. Nelson*, ____ U.S. ____, 105 S.Ct. 2992, 2998 (1985).

Based on the brief summary of the results obtained by counsel after five years of intense and acrid litigation, the Court finds that an enhanced fee award is appropriate, and further finds that the lodestar figure should be increased to reflect the excellent results achieved.

VIII

CONCLUSION ON ATTORNEYS' FEES

In conclusion, the Court finds that a fifteen percent (15%) upward adjustment of the lodestar figure is proper after consideration of all special factors.

In light of the analysis above concerning the lodestar figure and the 15% upward adjustment thereof, the Court finds that the following chart represents the correct numbers and tabulations which constitute a fair and just attorneys' fees award in this case:

Attorney	*Lodestar*	*15% Multiplier*	*Total Fee Award*
Kurzban	$188,926.25	$28,338.94	$217,265.19
Stotzky	83,827.50	12,574.13	96,401.63
Winick	132,923.75	19,938.56	152,862.31
Weisz	47,115.00	7,067.25	54,182.25
Hall	9,780.00	1,467.00	11,247.00
Rosen	56,225.00	8,433.75	64,658.75
Wald	4,973.00	-0-[14]	4,973.00
Fried	270,551.25	40,582.69	311,133.94
			$950,944.87

IX

COSTS

The Plaintiffs' counsel requests reimbursement for costs and expenses in the following amounts:

Attorney	§1920	EAJA	Sup.Ct	Total less Sup.Ct.
HRC, Inc.	$47,204.82	$39,081.25	$9,059.31	$77,226.76
Fried	$39,951.34	$56,374.26	$13,964.34	$82,361.26
Winick	-0-	$1,372.90	$1,206.01	$166.89
Wald	-0-	$499.82	-0-	$499.82
				$160,254.73

There is clearly a lack of consistency among the courts when it comes to determining which items are recoverable as costs or expenses under 28 U.S.C. § 1920 or under 28 U.S.C. § 2412(d)(C)(2)(A) respectively.

Section 1920 of Title 28 states:

> A judge or clerk of any court of the United States may tax as costs the following:
>
> (1) Fees of the clerk and marshal;
>
> (2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;
>
> (3) Fees and disbursements for printing and witnesses;
>
> (4) Fees for exemplification and copies of papers necessarily obtained for use in the case;
>
> (5) Docket fees under section 1923 of this title;
>
> (6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

The above list is not exhaustive, however, of which items courts recognize as recoverable in cases brought under the EAJA.

That is so because the EAJA states in pertinent part in Section 2412(d)(C)(2)(A):

For the purposes of this subsection—

> (A) "fees and other expenses" includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party's case, and reasonable attorney fees.

Thus, the language of the EAJA illustrates that while the "costs" incurred by the party may be recoverable only under § 1920, "expenses" may be recoverable under § 2412(d)(C)(2)(A). The clear language of the latter section lists certain expenses as examples, not limitations. *Hoopa Valley Tribe*, 569 F. Supp. at 947.

Courts have interpreted the above statutory sections inconsistently. For example, in *Action on Smoking and Health v. C.A.B.*, 724 F.2d 211, 224 (D.C. Cir. 1984), the court did not allow compensation as expenses under the EAJA for taxi fares, filing, wrapping and postage, but did allow compensation for photocopying costs, citing to *NAACP v. Donovan*, 554 F. Supp. 715, 719D. D.C. 1982).

Another court allowed prevailing plaintiffs to recover their copying costs, but arbitrarily reduced the requested amount of 25¢ per page to 10¢. *Wolfe v. Wolfe*, 570 F. Supp. 826, 826 (D.S.C. 1983).

In the case *American Academy of Pediatrics v. Heckler*, 580 F. Supp. 436, 440 (D.D.C. 1984), the court went a step further. There, the court disallowed compensation under the EAJA for research costs and overhead, as well as transportation and filing. Furthermore, the court held that paralegal and law clerk time was only compensable at the actual cost of their salaries paid out by the law firm. This Court strongly disagrees with that position.

In a decision handed down the same day as *American Academy of Pediatrics*, the same court held that "to

award 'fees' for law clerk and paralegal time at hourly charges billed to clients would, in effect, be to compensate those firms for both overhead and profit." *Ashton v. Pierce*, 580 F. Supp. 440, 443 (D.D.C. 1984). Yet, the court did permit reimbursement for the salaries paid to the paralegals and law clerks. Insight into that court's somewhat jaundiced view of the EAJA is provided by the following passage:

> It is now accepted that lawyers who prevail in these cases may be entitled to be paid a reasonable fee for services which are still somewhat euphemistically referred to as "*pro bono*". Atorneys hope to receive and usually request massive fees which cover their time, overhead, out-of-pocket expenses and a handsome profit. Often the government is asked to pay for the "learning experiences" of coveys of junior associates and other assistants assigned to a case to break the tedium of everyday practice.

580 F. Supp. at 4544.

This Court finds the above harangue to be simply inapplicable to the instant case. If the court in *Ashton* had been privy to the workings of this case, it would have been crystal clear that any abuses inherent in our legal system are seldom found in the fee applications of dedicated lawyers who provided a vital service to our citizenry by offering, *without compensation*, to protect the rights of all persons. Congress perceived a need to offer the possibility of compensation to attorneys who are willing to take the government to task; but *only* when the government acts without substantial justification are the public coffers opened.

With regard to the compensability of paralegal and law clerk time, the Court finds that the analysis set forth in

Hoopa Valley v. Watt, 569 F. Supp. 943, 947 (N.D.Cal. 1983) to be more pursuasive. There, the court noted:

> [T]he lower rates sought for law clerk services are reasonable and should be compensated as part of attorney's fees because the use of such services is a cost-efficient component of the modern practice of law.

Although law clerk and paralegal services constitute a part of attorney's fees, there is no basis for applying any multiplier to the figures. Thus, the Court will compensate Plaintiffs' counsel for the work performed by their paralegals and law clerks pursuant to the rate schedule provided by counsel.

The Court agrees with the Plaintiffs' position that virtually all expenses and costs reasonably incurred are recoverable under either 28 U.S.C. § 1920 or the EAJA.

The Eleventh Circuit had made very explicit its opinion that "with the exception of routine office overhead normally incurred in case preparation, during the course of litigation, or as an aspect of settlement of the case may be taxed as costs under section 1988." *Dowdell c. City of Apopka, Florida*, 698 F.2d 1181, 1192 (11th Cir. 1983).[14] The court allowed reimbursement in that case for travel, telephone and postage, and cited with approval several cases which permitted recovery for additional costs and expenses, such as mileage, photocopying, food and lodging.

This Circuit is not alone in its position that costs and expenses are not limited to docket fees and the like. Rather, the Ninth Circuit recently permitted an award for costs of telephone calls, postage, air courier and attorney travel expenses on the ground, finding that similar costs are

[14] Because the attorneys from Wald, Harkrader were involved only in the preliminary stages of this litigation, the enhancement factors are not applicable to their efforts.

routinely awarded under other fee statutes, and thus should be awarded under the EAJA. *International Woodworkers of America, AFL–CIO, Local 3098 v. Donovan*, 769 F.2d 1388 (9th Cir. 1985). *See also Hoopa Valley Tribe v. Watt*, 569 F. Supp. 943 (N.D. Cal. 1983) (telephone and travel costs awardable as part of expenses since they would normally be billed to client).

As for the witness and expert witness fees, the Court is satisfied that the testimony provided by Messrs. Gitlow, and Bernsen at trial was necessary, as was the testimony of Messrs. Mailman and Rogow at the hearing on attorney's fees.

With regard to the claims for computer time, the Court finds that Lexis charges are dissimilar from typing in that lexis fees are paid entities outside the law firm and are also generally charged to the client. Computer charges should be allowable as expenses and this Court will so allow compensation for those expenses.

Finally, the Court opines that the record keeping practices of the claimants has been sufficiently accurate so that no deduction therefor is necessary. The Court also notes at this time that the HRC, Inc., being an organization that has neither the facilities not financial strength to employ a state of the art billing system did a pretty good job of record keeping in light of those limitations.

X

SOME DEDUCTIONS ARE NECESSARY

The Court can find no way to justify awarding compensation for secretarial overtime as either costs or expenses. secretarial work is part of the everyday activity of a law firm which constitutes its overhead. Secretarial salaries are paid to employees of the firm, and thus are not similar to those monies paid to persons outside the firm such as

process servers or witnesses. Furthermore, their salaries cannot be equated with costs, such as filing fees, or expenses such as postage or computer charges, which are similarly paid to entities outside of the law firm. Attorneys cannot be compensated for normal overhead expenses.

The Court finds no authority to support the inclusion of hours and subsequent charges related to secretarial overtime in the award. The chart outlining the costs and expenses awardable is thus amended to reflect the deduction as follows:

Attorney	*§1920*	*EAJA*	*Overtime*	*S.Ct.*	*Total*
HRC	$47,204.82	$39,081.25	$633.40	$9,059.31	$76,563.36
Fried	$39,951.34	$56,374.26	$14,752.60	$13,964.34	$74,939.26[15]
Winick	-0-	$1,372.90	-0-	$1,206.01	$166.89
Wald	-0-	$499.82	-0-	-0-	$499.82
					$152,169.33

XI

CONCLUSION ON COSTS AND EXPENSES

In conclusion, the Court finds that the summary of costs and expenses framed above accurately reflects what the law of this Circuit requires. In order to give true vitality to the EAJA and its corrolating statutes, courts must not be parsimonious solely because the monies paid are removed from the public coffers. On the contrary, the law requires courts not to consider that prevailing plaintiffs are paid from public funds. *Copeland v. Marshall*, 641 F.2d 880, 894-96 (D.C. Cir. 1980).

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[15] This figure adds in the expert witness fee and costs and copying which add up to $7,330.60, said amount not being included in the Plaintiffs' Proposed Findings of fact and Conclusions of Law, and which the Court includes at this time.

XII

FEES FOR FEES AND POST-JUDGMENT INTEREST

In a recent case, the Eleventh Circuit held:

> [I]n this case of first impression for the Eleventh Circuit, we apply the general intent of the Act and decline to hold that this court may award fees for fees only if the government's position in the fees litigation was not substantially justified. *Haitian Refugee Center, Inc. v. Meese*, 791 F.2d 1489, 1550 (11th Cir. 1986).

Based on that clear enunciation of the law in this circuit, this Court directs the Plaintiffs' counsel to submit for the Court's review affidavits concerning the fees, costs and expenses incurred in pursuit of attorneys' fees. *See Volpe v. Heckler*, 610 F. Supp. 144 (S.D. Fla. 1985).

As for post-judgment interest, the EAJA was amended August 5, 1985 to included the following paragraph:

> (f) If the United States appeals an award of costs or fees and other expenses made against the United States under this section and the award is affirmed in whole or in part, interest shall be paid on the amount of the award as affirmed. Such interest shall be determined under Section 1916(a) of this title, and shall run from the date of the award through the day before the date of the mandate or affirmance,

This statutory amendment overrules this circuit's previous ruling in *Arvin v. United States*, 742 F.2d 1301 (11th Cir. 1984) which held that the district court was without authority to award interest on EAJA attorney's fees awards. The amendment is self-explanatory and requires no further comment by the Court.

XIII

CONCLUSION

It is within the Court's discretion to ascertain what constitutes a reasonable award of attorney's fees, costs and expenses under the Equal Access to Justice Act. The Court must make sure that the Act's fees provisions are not used to create "windfalls" to counsel. But, at the same time, counsel must be fairly compensated for their efforts. The findings and conclusions above illustrate what this Court believes is a fair award

Based on the above and foregoing, it is hereby

ORDERED AND ADJUDGED that attorneys fees, costst and expenses are awarded to counsel as follows:

IRA KURZBAN is awarded $217,265.19 in attorney's fees;

IRWIN STOTZKY is awarded $96,401.63 in attorney's fees;

BRUCE WINICK is awarded $152,862.31 in attorney's fees and $166.89 in costs;

VERA WEISZ is awarded $54, 182.25 in attorney's fees;

CHRISTOPHER KEITH HALL is awarded $11,247.00 in attorney's fees;

MICHAEL ROSEN is awarded $64,658.75 in attorney's fees;

WALD, HARKRADER is awarded $4,973.00 in attorney's fees and $499.82 in costs and expenses;

FRIED, FRANK is awarded $311,133.94 in attorney's fees, $38,220.80 in paralegal and law clerk fees and $74,939.26 in costs and expenses; and

HAITIAN REFUGEE CENTER, INC. is awarded $76,563.36 in costs and expenses

DONE AND ORDERED in Chambers, at Miami, Florida the 29 day of Aug., 1986.

EUGENE P. SPELLMAN

EUGENE P. SPELLMAN
UNITED STATE DISTRICT
JUDGE

cc: Ira Kurzban, Esquire
Irwin Stotzky, Esquire
Bruce Winick, Esquire
Michael Rosen, Esquire
Vera Weisz, Esquire
Niels Frenzen, Esquire
Robert Juceam, Esquire
Wald, Harkrader
Michael Lindemenn, Esquire
Leon Kellner, U.S. Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 81-1260-Civ-Spellman

LUCIEN LOUIS, ET AL., PLAINTIFFS

v.

ALAN C. NELSON, ET AL., DEFENDANTS

ORDER CONCERNING PLAINTIFFS' ENTITLEMENT TO ATTORNEYS' FEES, COSTS AND EXPENSES PURSUANT TO THE EQUAL ACCESS TO JUSTICE ACT

THIS CAUSE came before the Court on the plaintiffs' Motion for Attorneys' Fees, Costs, and Expenses under the Equal Access to Justice Act. For the reasons detailed below, this Court finds that the plaintiffs are entitled to an award of attorneys' fees, costs, and expenses allocable to their efforts in litigating their claims before this Court and the United States Court of Appeals for the Eleventh Circuit. By separate Order, this Court shall schedule a hearing to determine the amount that shall be awarded.

The Equal Acess to Justice Act ("EAJA") provides that:

> a court shall award to a prevailing party . . . fees and other expenses . . . incurred by that party in any civil action . . . brought by or against the United States . . . unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

28 U.S.C. § 2412(d)(1)(A).

APPENDIX

Thus, in order to grant an award of attorneys' fees, this Court must find that the plaintiffs were the prevailing parties within the meaning of the Act, that the government's position was not substantially justified and that there are no other special circumstances that would make an award unjust. All of the requirements for an award of attorneys' fees have been met here.

THE PLAINTIFFS WERE THE 'PREVAILING PARTIES'

The Supreme Court has observed that "plaintiffs may be considered 'prevailing parties' for attorneys' fees purposes if they succeed on any significant issue in the litigation which achieves some of the benefit the parties sought in bringing suit." *Hensley v. Eckerhardt,* ____ U.S. ____, 103 S.Ct. 1933, 1939 (1983), (quoting *Nadeau v. Helgemoe*, 581 F.2d 275, 278-279 (1st Cir. 1978)). There can be no doubt in this case that the plaintiffs succeeded on a significant issue.

This case began in response to implementation by the INS of a new policy of accelerated exclusion proceedings and detention without parole of all Haitian refugees.[1] In essence, the litigation had two primary goals. First, the plaintiffs sought to stop the mass exclusion hearings which were being held without councel.[2] And second, plaintiffs

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[1] The background to this litigation is discussed in this Court's opinion, *Louis v. Nelson*, 544 F.Supp. 973, 978-981 (S.D. Fla. 1982), and in the Eleventh Circuit's panel opinion, *Jean v. Nelson*, 711 F.2d 1455,1464-1474 (11th Cir. 1983).

[2] Indeed, shortly after this case was filed the government conceded that the exclusion orders entered at such hearings were invalid and therefore said orders were vacated. Thus, plaintiffs were the prevailing party on this aspect of the litigation and, in light of the government's action, its position was not substantially justified.

sought to obtain the release from detention of class members pending the determination of their political asylum applications, thereby restoring to full force and effect the prior policy of parole pending individual exclusion proceedings.[3]

After a lengthy trial, this Court hed that the new detention policy was adopted in violation of the Administrative Procedure Act ("APA") and that plaintiffs' continued incarceration pursuant to this policy was unlawful. *Louis v. Nelson*, 544 F.Supp. 973, 993-97 (S.D.Fla. 1982). Ten days later, this Court declared the new detention policy "null and void", and ordered the release of class members "forthwith" pursuant to a carefully drafted release plan. *Louis v. Nelson*, 544 F.Supp. 1004, 1006-07 (S.D. Fla. 1982). Thus, the plaintiffs effectively obtained both of the goals they set out to achieve. As a direct result of this litigation, the defendants stopped the accelerated mass

[3] The complaint, filed on June 16, 1981, asserted seven causes of action. Count I challenged the commencement of preliminary interviews for Haitian refugees without the presence of councel or notice of the right to councel; Count II challenged the legality of the new detention policy, which was not promulgated pursuant to the rule-making requirements of the APA; Count III challenged the failure to advise class members of their procedural rights at exclusion hearings; Count IV challenged the denial of access to counsel; Count V challenged the denial of public exclusion hearings; Count VI the denial of the right to apply for political asylum; and Count VII challenged the lawfulness of the new Haitian program in its entirety under the equal protection clause. In a Memorandum Opinion and Order dated February 24, 1982, this Court dismissed Counts I, III, V, and VI in their entirety and Counts IV and VII in part. It retained jurisdiction over Count II, Count IV insofar as it alleged that Haitians in detention had first amendment rights of access to councel and that the Haitian Refugee Center had a claim of access to those persons in detention; and Count VII insofar as it alleged that the detention policy was applied in a discriminatory fashion. *Louis v. Meissner*, 532 F.Supp. 881 (S.D. Fla. 1982).

exclusion hearings and class members were released from indefinite incarceration.[4] These results were affirmed by the Eleventh Circuit panel. *See Jean v. Nelson*, 711 F.2d 1455, 1510 n.63 (11th Cir. 1983). The *en banc* court dismissed the defendant's appeal of this Court's decision on the APA issue, thus leaving the results plaintiffs obtained undisturbed. *See Jean v. Nelson*, 727 F.2d 957, 962 (11th Cir. 1984), *aff'd in part*, 105 S.Ct. 2992 (1985).[5]

The fact that plaintiffs did not "prevail" on their claim that the new policy violated their fifth amendment rights to equal protection does not mean that they cannot be considered "prevailing parties" for attorneys' fees purposes.

[4] The relief obtained by the plaintiffs mooted many of the issues raised in the complaint. Plaintiffs were released from detention and indirectly obtained councel or notice of the right to councel, thereby ensuring that class members would have notice of their procedural rights at exclusion hearings (Count III), including the right to apply for political asylum (Count VI). As a result of this lawsuit, defendants stopped their practice of preventing lawyers from contacting Haitians at closed exclusion hearings (Count I). With the release of class members, plaintiffs have had access to councel and councel have had access to class members (Count IV). Also as a direct result of this litigation, the INS promulgated new parole regulations which are facially neutral and which require parole decisions to be made without regard to race or nationality. See 8 CFR § 212.5 (1985).

[5] The Eleventh Circuit panel that originally heard this matter found that the defendants discriminated against the plaintiff class in the enforcement of the new detention policy and that plaintiffs were therefore denied equal protection. *Jean v. Nelson*, 711 F.2d at 1509. The Eleventh Circuit, sitting *en banc*, however, held that excludable aliens have no constitutional rights with respect to their applications for admission, asylum, or parole. *Jean v. Nelson*, 727 F.2d 957 (11th Cir. 1984)(en banc). The Supreme Court held that the *en banc* court should not have reached the constitutional issue because under the statutes and regulations now in effect, parole decisions must be made without regard to race or national origin. *Jean v. Nelson*, 105 S.Ct. at 2998.

Plaintiffs need not prevail on every issue to be considered a prevailing party. For purposes of attorneys' fees, "[t]he result is what matters." *Hensley,* 103 S.Ct. at 1940. Plaintiffs merely pursued alternative litigation theories in attacking the INS' new detention policy.[6]

THE GOVERNMENT'S POSITION ON THE APA ISSUE WAS NOT SUBSTANTIALLY JUSTIFIED

The government has the burden of proving that its position "had a reasonable basis both in law and fact." H.R. Rep. No. 1418, 96th Cong., 2d Sess. 6, U.S. Code Cong. & Admin. News 1098, p. 4989; S. Rep. No. 253, 96th Cong., 1st Sess. 6 (1979). The Eleventh Circuit has emphasized that the legislative history of the Equal Access to Justice Act requires "the government to make a *strong showing* to demonstrate that its action was reasonable." *S. & H. Riggers & Erectors, Inc. v. O.S.H.R.C.,* 672 F.2d 426, 430 (11th Cir. 1982) (citations omitted) (emphasis supplied by the court). *See also Environmental Defense Fund, Inc. v. Watt,* 722 F.2d 1081, 1085 (2d Cir. 1983). The government has not and, indeed, cannot make the requisite showing here.

On August 5, 1985, the Equal Access to Justice Act was amended with regard to the "position of the United States" when determining substantial justification. Under the amendment, which applies to pending cases, the government must not only show substantial justification with regard to its litigating position, but also "the action or

[6] This Court was well aware that after it found that the new policy was violative of the APA that "[t]echnically . . . [it] need not go further in order to resolve plaintiffs' other claims for relief." *Louis* , F.Supp. at 977. However, the Court chose to review the equal protection claim in the interests of "judical economy and fairness." *Id.* at 997-98.

failure to act by the agency upon which the civil action is based." Pub.L.No. 99-80, ¶ 2(c)(2)(d). Under the facts of this case, the distinction makes little difference. *See Ashburn v. United States,* 740 F.2d 846 n.1 (11th Cir. 1984) (noting that in a typical case there is no real difference between action of agency and litigation position). The INS made a determination that its new detention policy did not have to comply with the rulemaking requirements of the Administrative Procedure Act. When this was challenged in Court, attorneys from the United States Attorney's Office and the Department of Justice argued that the INS was correct. The position taken by the INS and the position taken by the government attorneys in defending the INS' actions were essentially the same. And these positions were unreasonable.

The INS was well aware prior to this litigation that the courts in this jurisdiction had consistently rejected INS' claim that the APA did not apply to changes of substantive policy regarding Haitian refugees. *National Council of Churches v. Egan,* No. 79-2959-Civ-HOEVELER, Slip. op. at 3 (S.D. Fla. Aug. 3, 1979) (preliminary injunction entered, not appealed); *Sannon v. United States,* 460 F.Supp. 458, 466-67 (S.D. Fla. 1978), *remanded to be vacated as moot,* 631 F.2d 104 (S.D. Fla. 1978).

Indeed as early as March 20, 1981, the INS Acting General Counsel wrote a memorandum summarizing the legal requirements applicable to the defendants' detention policy and mass exclusion hearings. Citing the *Sannon* case as authority, he advised the INS that "[a]ny change in regulations which takes rights or privileges away from aliens will most likely require a 60-day notice and comment period, and a 30-day delayed effective date. . ." Legal Memorandum by INS Acting General Counsel Paul Schmidt, Px94. But even though the INS was apparently

aware that it needed to comply with the APA, the defendants intentionally refused to do so. As this Court found:

> They admitted to the Court that they made a conscious decision not to promulgate a rule pursuant to the Administrative Procedure Act. The evidence shows that they never seriously undertook the difficult task of drafting a set of guidelines concerning which aliens would be placed in detention. Instead, INS issued general instructions to its field officers to start detaining excludable aliens who do not establish a prima facie claim for admission.

Louis v. Nelson, 544 F.Supp. at 981.

In light of prior precedent and the advice of counsel, INS' refusal to comply with the APA was not reasonable; nor was the position of the United States Attorney's Office in defending these actions by claiming that the change in policy was not a rule subject to the rulemaking requirements of the APA. This Court rejected the government's claims in its opinion, finding that the change in policy was "clearly" a rule subject to the rulemaking requirements of the APA. *Louis v. Nelson*, 544 F.Supp. at 997. The Eleventh Circuit found that defendants were not likely to succeed on this issue and denied their request for a stay. *Jean v. Nelson*, 683 F.2d 1311, 1312 (11th Cir. 1982). After hearing the case, the Eleventh Circuit panel completely rejected the government's arguments that the new policy was not a rule to which the APA rulemaking requirements applied and affirmed the decision of this Court. *Jean v. Nelson*, 711 F.2d at 1483.

The government's factual position in this litigation was also without merit. The defendants repeatedly denied that there was a new detention policy for Haitians, claiming that the district directors still had complete discretionary authority to parole individuals or, alternatively, that the

directors were merely enforcing the statute. *See also Jean v. Nelson*, 711 F.2d at 1469-1470 (discussing conflicting testimony at trial by Administration officials as to whether there was a policy change). It was only well into the litigation that the defendants admitted what had been obvious—that there was a detention policy and that they had instituted this policy without complying with rulemaking procedures. Since the plaintiffs had consistently maintained that there was a detention policy, the defendants' unreasonable factual position unnecessarily prolonged the litigation of this matter.

Finally, the defendants have not demonstarated any special circumstances which would make an award unjust. Indeed, considering the extraordinary efforts of plaintiffs' counsel and the excellent results they achieved, it would be unjust to deny an award of attorneys' fees.

THE PROPER STANDARD

The issue of attorneys' fees in this case is complicated, however, by the fact that the government's legal position—that the INS' actions did not violate the equal protection guarantee of the fifth amendment—must be considered reasonable in light of the fact that the Cleventh Circuit, sitting *en banc*, actually agreed with the government on this point. Even though the Supreme Court found that the circuit court should not have reached the constitutional issue, the government was certainly "justified" for EAJA purposes in defending against the claim that the INS' actions violated the equal protection guarantee.

In *Hensley*, the Supreme Court emphasized that counsel should not be penalized for pursuing, in good faith, alternative claims for relief.[7] Although the Court observed in a

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[7] According to the Court:

> In [certain] cases the plaintiff's claims for relief will involve a common core of facts or will be based on related legal theories.

footnote that the standard it set forth is "generally applicable in all cases in which Congress has authorized an award of fees to a 'prevailing party,' " 103, S.Ct. at 1939 N.7, this Court is of the opinion that these principles must be modified to some degree for fee awards under the Equal Access to Justice Act. Unlike the Civil Rights Attorney's Fees Awards Act, which allows prevailing parties in suits brought under specified civil rights statutes to recover "a reasonable attorney's fee as part of the costs." 42 U.S.C. § 1988, the Equal Access to Justice Act mandates the award of attorneys' fees *unless* "the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust." 28 U.S.C. § 2412(d)(1)(A). Thus, under the Equal Access to Justice Act, a prevailing party in a suit against the government cannot be awarded fees when the government's position was reasonable.

> Much of counsel's time will be devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis. Such a lawsuit cannot be viewed as a series of discrete claims. Instead the district court should focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expoended on the litigation.
>
> Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee. Normally this will encompass all hours reasonably expended on the litigation, and indeed in some cases of exceptional success an enhanced award may be justified. In these circumstances the fee award should not be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit. Litigants in good faith may raise alternative legal grounds for a desired outcome, and the court's rejection of or failure to reach certain grounds is not sufficient reason for reducing a fee. The result is what matters.

Hensley v. Eckerhart, 103 S.Ct. at 1940 (citation and footnote omitted).

In *Matthews v. United States,* 713 F.2d 677 (11th Cir. 1983), the Eleventh Circuit articulated the standard to be used in an Equal Access to Justice Act claim when a plaintiff prevails in some but not all its claims against the United States. Adopting the approach of the Third Circuit in *Goldhaber v. Foley,* 698 F.2d 193,197 (3d Cir. 1983), the Court noted that neither the terms of the Act nor its legislative history addressed this situation. It therefore began its analysis by looking to the underlying purpose of the Equal Access to Justice Act. If found:

> The governing principle of the Act is that the "United States should pay those expenses which are incurred when the government presses unreasonable positions during litigation." The central purpose of the Act is "to eliminate any barrier to litigation challenging unreasonable government conduct presented by the specter of attorney's fees. . . . Because the Equal Access to Justice Act contemplates deterring only unreasonable positions," it would contravene the purposes of the Act to require the government to bear the expense of defending even its reasonable positions. Following the Third Circuit, we adopt the position "that the United States is only responsible for that portion of the expenses attributable to its unjustified positions."

713 F.2d at 683-684 (citations omitted).

Thus, when reviewing a claim for attorneys' fees under the EAJA, the Court must take into account not only the results obtained but also the reasonableness of the government's positions on each of the disputed claims. As discussed above, the Court finds that the government was not substantially justified in its position on the APA claim. By prevailing on this claim, the plaintiffs obtained virtually all the relief they requested, a factor that should weigh heavily in the determination of the fee award. On

the other hand, because the government did not act unreasonably in defending against the claim that the INS' actions violated the equal protection guarantee of the fifth amendment, any fee award must also be reduced accordingly.

The Supreme Court observed in *Hensley* that when a lawsuit involves a "common core of facts" or "related legal theories" as this case did, "[m]uch of counsel's time will be devoted generally to the litigation as a whole, making it difficult to divide hours expended on a claim by claim basis." 103 S.Ct. at 1940. This observation is particularly apt here. Determining the amount of time spent on each claim would be particularly onerous in this case, given the interrelated nature of the facts and theories and the number of attorneys involved in the various aspects of the litigation. The Court notes that there was considerable overlap between the APA and the equal protection claim. The preliminary issues were essentially the some. For example, for both claims plaintiffs had to establish that they had standing, that this Court had subject matter jurisdiction, that they were entitled to preceed as a class, that a "final" INS order was not required, that they had exhausted administrative remedies, that the detention policy was not committed to agency discretion and that the political question doctrine did not apply.

Even at trial, the presentation of the equal protection issue overlapped to some degree with the APA claim. Defendants argued that there had not been a change in detention policy and that INS officials continued to have the same discretion to grant parole. Plaintiffs' Exhibit 1, for example, was offered to prove both that the defendants had a policy and that this policy discriminated against Haitians.

This Court does not think it is appropriate to further protract the matter by attempting to identify which

specific hours and expenses should be eliminated from a fee award because they are attributable to the equal protection claim and not the APA claim. Rather, one of the factors the Court will consider in determining the ultimate fee award in this case is that the government was not unreasonable in defending against the equal protection claim. Any award will be adjusted downward total attorney time that should be attributed to each claim can be approximated.

The Court will conduct a hearing to determine the total number of hours that can be considered "reasonably expended" on the litigation and an reasonable hourly rate for the attorneys involved. In addition to the downward adjustment discussed above, the Court will consider whether the fees should be enhanced for any reason pursuant to 28 U.S.C. 2412(d)(2), including th excellent results achieved by plaintiffs' counsel, the limited availability of qualified counsel for this kind of litigation, and the delay in payment of this award.[8]

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[8] Because the litigation before the Supreme Court concerned only the equal protection claim, the paintiffs are no entitled to compensation under the EAFA for their efforts in that Court. However, the plaintiffs have pointed out that the government apparently changed its litigation position as the case progressed. Before the Supreme Court, the government argued that the INS was precluded by statute and regulations from making nationality-based distinctions. Based upon this representation, the Court found that it was unnecessary to reach the constitutional issues. At trial, however, the government argued to the contrary—that nationality can be a factor in determining whether an alien is paroled.

This Court recognizes that if the government had taken the position it now takes during the trial, the constitutional claims may not have needed to be litigated. The Court will therefore consider the government's apparent change in position in adjusting the final fee award.

DONE AND ORDERED in Chambers at Miami, Florida, this 6th day of December, 1985.

/s/ Eugene P. Spellman
EUGENE P. SPELLMAN
United States District Judge

Copies to all counsel of record.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 81-1260-Civ-Spellman

LUCIEN LOÚIS, ET AL., PLAINTIFFS

v.

ALAN C. NELSON, ET AL., DEFENDANTS

SUBMISSION OF ATTORNEY'S FEES AFFIDAVITS PURSUANT TO COURT ORDER OF AUGUST 29, 1986

The Plaintiffs, by an through their undersigned counsel, and pursuant to this Court's Order of August 29, 1986 submit the attached requests for attorney's fees, costs and expenses.

Respectfully submitted,

KURZBAN KURZBAN WEINGER & HOLTSBERG
Plaza 2650, Second Floor
2650 S.W. 27th Avenue
Miami, Florida 33133
(305) 444-0060

BY: IRA J. KURZBAN, ESQ.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed by first class mail to Michael Lindemann, Esq. at Office of Immigration Litigation, 550 11th Street, N.W., Washington D.C. 20530, on this 8th day of September 1986.

IRA J. KURZBAN, ESQ.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 81-1260-Civ-Spellman

LUCIEN LOUIS, ET AL., PLAINTIFFS

v.

ALAN C. NELSON, ET AL., DEFENDANTS

AFFIDAVIT OF IRA J. KURZBAN, ESQ. ON ATTORNEY'S FEES PURSUANT TO COURT ORDER OF AUGUST 29, 1986

BEFORE ME, the undersigned authority appeared IRA J. KURZBAN, ESQ. who being duly sworn deposes and states that the following fees, expenses and costs were all reasonably and necessarily incurred in seeking attorney's fees in this action:

I. *ATTORNEY'S FEES*

8/1/85	Reviewed Gov. Memo in Response to Plaintiffs' Supplemental Memo	.4
8/4/85	Discussion with co-counsel re: response	.5
8/5/85	Reviewed draft response and discussion with co-counsel	1.25
8/30/85	Plaintiffs' reliance on supp. authority	.6
9/13/85	Plaintiffs' Second Notice of reliance	1.3
12/9/85	Reviewed Court's opinion	.8
1/15/86	Reviewed documents for experts	5.2
1/16/86	Letter and documents to experts	1.
2/3/86	Conversations with co-counsels	1.4
2/4/86	Reviewed Gov. Motion to Reconsider and began research	7.
2/5/86	Continued research and drafted response	14.

2/5/86	Meeting w/ co-counsel to prepare hearing	3.
2/6/86	Preparation and trial	10.
2/23/86	Preparation for trial	3.
2/24/86	Trial and preparation for next day	10.
2/25/86	Trial and preparation for next day	5.
2/26/86	Preparation and trial	8.
3/6/86	Preparation for closing argument	4.
3/7/86	Closing argument	2.
5/6/86	Reviewed draft of Plaintiffs' finding of fact and conclusions of law	3.5
5/12/86	Reviewed Gov. findings of fact	1.25
5/16/86	Reviewed and commented on Plaintiffs' second draft of findings	2.5
5/30/86	Spoke with clerk	.25
6/28/86	Re-read *HRC v. Smith* for submission	.5
6/30/86	Filed Supp. Authority with analysis	3.5
8/29/86	Reviewed Court's Opinion	1.
8/31/86	Drafted affidavit on fees	.75
9/1/86	Drafted Motion to Clarify and Ct. Order	3.8
9/2/86	Discussions with co-counsel and review of motions and affidavits	4.5
9/7/86	Review of final draft and corrections	3.2
9/8/86	Review of final draft and submission	1.8
		105.0
		x$125/hr
	SUB-TOTAL	$13,125.00

II. *COSTS*

A.	28 USC § 1920(1) [Clerk/Marshall Fees]	$ 17.00
B.	28 USC § 1920(4) Copying Costs	2,390.31
	SUB-TOTAL	$2,407.31

III. *EXPENSES*

A.	28 USC § 2412(d)(1)(A)	
	Courier Service	$ 257.00
	Telephone	44.61
	Miscellaneous (e.g. Parking)	3.75
	SUB-TOTAL	$ 301.36
I.	ATTORNEY'S	$13,125.00
II.	COSTS	2,407.31
III.	EXPENSES	301.36
	TOTAL	$15,833.67

IRA J. KURZBAN, ESQ.

Sworn to and Subscribed before me this 8th day of September, 1986.

NOTARY PUBLIC
State of Florida

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 81-1260-Civ-Spellman

LUCIEN LOUIS, ET AL., PLAINTIFFS

v.

ALAN C. NELSON, ET AL., DEFENDANTS

AFFIDAVIT OF BRUCE J. WINICK, ESQ. ON ATTORNEY'S FEES PURSUANT TO COURT ORDER OF AUGUST 29, 1986

BEFORE ME, the undersigned authority appeared BRUCE J/ WINICK, ESQ., who being duly sworn deposes and states that the following fees, expenses and costs were all reasonably and necessarily incurred in seeking attorney's fees in this action:

I. *ATTORNEY'S FEES*

12/9/85	Reviewed Court's opinion	1.0
2/3/86	Conversation with co-counsel	.5
2/5/86	Meeting with co-counsel to prepare hearing	3.0
2/6/86	Preparation and hearing	4.0
5/6/86	Reviewed draft of plaintiffs' finding of fact and conclusions of law	2.0
6/27/86	Review *H.R.C. v. Smith* and conversation with co-counsel	1.0
8/30/86	Reviewed Court's opinion and meeting with Ira Kurzban	1.0
9/1/86	Reviewed and redrafted motion and proposed order	1.0
	TOTAL HOURS	13.5
		x$ 125/hr
	TOTAL	$1,687.50

BRUCE J. WINICK, ESQ.

Sworn to before me this 2nd day of September, 1986.

NOTARY PUBLIC
State of Florida

AFFIDAVIT OF IRWIN P. STOTZKY

IRWIN P. STOTZKY, bring duly sworn, hereby deposes and says:

I have reasonably and necessarily expended the following hours, between February 3, 1986 and February 24, 1986, doing legal work in *Jean v. Nelson*:

Date	Task	Hours
2/3/86	Phone conference with Ira Kurzban from New Haven, Connecticut	.5
2/4/86	Preparation for Heaing	2.0
2/5/86	Conference in Miami with Ira Kurzban, Bruce Winick, Robert Juceum and Terry Corrigan re: preparation for hearing	3.0
2/6/86	Hearing on attorney's fees and costs	8.0
2/23/86	Preparation for Hearing	2.0
2/24/86	Hearing and testimony	5.0
	TOTAL HOURS	20.5
	Hourly rate: $125.00 per hour	
	Total Amount:	$2,562.50

Irwin P. Stotzky

Sworn to and subscribed before me this 1st day of September, 1986.

Notary Public – State of Florida

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 81-1260-Civ-Spellman

LUCIEN LOUIS, ET AL., PLAINTIFFS

v.

ALAN C. NELSON, ET AL., DEFENDANTS

SUPPLEMENTAL AFFIDAVIT OF VERA A. WEISZ WITH REFERENCE TO ATTORNEYS' FEES AND COSTS

I, VERA A. WEISZ, hereby declare:

1. I am an attorney admitted to the practice of law in the states of Florida and California. I was employed by the Haitian Refugee Center, Inc. in Miami, Florida at the time that I was involved in the litigation of the instant case. I am currently self-employed in my law practice at 3250 Wilshire Blvd. Suite 1604, Los Angeles, Californi, 90010.

2. I am submitting this supplemental affidavit setting forth the hours I have spent in 1986, to date, in presenting my claim for attorneys' fees and costs on behalf of the Haitian Refugee Center, Inc.

3. In February, 1986, I spent twenty-five (25) hours in travel, preparation, and testimony in this matter as set forth on the attached statement. My current billing rate is $100.00 per hour. Therefore, the total fee for my hours is $2,500.

4. My costs for airfare, flying roundtrip from Los Angeles to Miami and back were $319.00. I had additional travel costs for the sum of $39.62, bringing my total costs to a total of $358.62.

I declare under penalty of perjury that the foregoing is true and correct this 2nd day of September, 1986. at Los Angeles, California.

/s/ Vera A. Weisz
VERA A. WEISZ

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 81-1260-Civ-Spellman

LUCIEN LOUIS, ET AL., PLAINTIFFS

v.

ALAN C. NELSON, ET AL., DEFENDANTS

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

SANDRA M. LIPSMAN, being duly sworn, deposes and says:

1. I am an associate employed by Fried, Frank, Harris, Shriver & Jacobson, and am fully familiar with the firm's activities in connection with prosecution of the fee application in this matter.

2. I submit this affidavit in support of a request for attorneys' fees, costs and expenses incurred in prosecution of the fee application in this matter, pursuant to this Court's Order dated August 29, 1986.

3. Attached hereto as Exhibit A is an itemization of all productive hours spent by attorneys, paralegals, and law clerks at the firm in prosecution of the fee application. At the requested rates of $75.00 for attorneys and $40.00 for paralegals and law clerks, which rates are well below the firm's customary billing rates, the total fee requested is $58,103.75.

4. The firm also requests an award of $20,536.91, detailed in Exhibit B, representing costs and expenses advanced in connection with the firm's fee application.

5. For the convenience of the Court, attached hereto as Exhibit C is a summary of the fees, costs, and expenses requested pursuant to the Court's Order of August 29, 1986.

6. I have reviewed firm records concerning time and disbursements and prepared the attached itemizations from those records. I believe that the number of hours and the expenditure totals listed herein were properly computed and were reasonably, necessarily and justifiably incurred. Accordingly, all attorneys' fees, expenses and costs, in the amounts requested, should be awarded.

Sandra M. Lipsman

Sworn to before me this ____ day of September, 1986.

Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 81-1260-Civ-Spellman

LUCIEN LOUIS, ET AL., PLAINTIFFS

v.

ALAN C. NELSON, ET AL., DEFENDANTS

ORDER VACATING MEMORANDUM OPINION AND ORDER ON ATTORNEYS' FEES, COSTS AND EXPENSES

This CAUSE comes before this Court on Plaintiffs' Motion for Amplification of Order for Entry of Judgment on Attorney's Fees, Costs and Expenses. In light of this motion and the accompanying memorandum which calls to this Court's attention the possibility of a fatal defect in the way in which the Court awarded attorney's fees, it is hereby

ORDERED AND ADJUDGED that this Court vacate and hold in abeyance its August 29, 1986 Court Order and Memorandum Opinion awarding attorney's fees until such time that it examines the circumstances and determines what measures, if any, this Court must take to correct the situation.

DONE AND ORDERED in Chambers at Miami, Florida, this 10 day of Sept. 1986.

/s/ [SIGNATURE ILLEGIBLE]
UNITED STATES DISTRICT JUDGE

cc: All Counsel of Record

Supreme Court of the United States

No. 89-601

COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE, ET AL., PETITIONERS

v.

MARIE LUCIE JEAN, ET AL.

ORDER ALLOWING CERTIORARI. Filed January 22, 1990.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Eleventh Circuit is granted.

January 22, 1990

U.S. GOVERNMENT PRINTING OFFICE: 1990 262-203 (80174)